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MIGRATION  
POLICY CENTRE



## REGIONAL MIGRATION REPORT: EASTERN EUROPE

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The **Migration Policy Centre** at the European University Institute, Florence, conducts advanced research on global migration to serve migration governance needs at European level, from developing, implementing and monitoring migration-related policies to assessing their impact on the wider economy and society.

The **CARIM-East project** is the first migration observatory focused on the Eastern Neighbourhood of the European Union and covers all countries of the Eastern Partnership initiative (Belarus, Ukraine, the Republic of Moldova, Georgia, Armenia and Azerbaijan) and Russian Federation.

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## **FOREWORD**





Eastern European countries, i.e. Belarus, Moldova and Ukraine, share a common land border with the European Union. This border divides nations, communities, families and while the border has moved, through European history, the people on either side rarely have. They, in fact, built strong cultural and personal ties in the periods of living together, ties that endured subsequent divisions by state lines. These ties influence the ongoing mobility of Eastern Europeans today. The present report sheds some light on the various issues concerning migration and mobility in the region.

Following the wider patterns of most states emerging from the collapse of the Soviet Union, all three countries have experienced emigration and immigration in the 1990s, mainly in an ethnic key. These included emigration not only to other post-Soviet states but also kin-migration to countries currently forming part of European Union: particularly Germany and Poland. Ukraine and Moldova still tend to be countries of emigration rather than immigration. Belarus, on the other hand, is not a clear-cut case: the administrative data show clear positive net-migration, but they do not capture the important outflow of Belarusians to the Russian Federation, which goes practically unrecorded due to the specificities of the administrative and the legal framework: the free movement of workers between the two countries and the tendency of migrants to avoid registration.

Ukrainian migrants follow the historically established corridors: inhabitants of Western Ukraine follow the route to the European Union; while those from its Eastern part choose the Russian Federation. This results in an almost equal distribution of flows. Ukrainians also have a higher propensity to circulate and be mobile than other Eastern Europeans. Moldovan migratory movements are very specific. They are directed towards the Russian Federation (for the Russian-speaking population), Romania (for speakers of Romanian and people qualifying for Romanian citizenship), and Italy (particularly for Romanian-speakers). Moldovan migration to the EU tends to be more permanent and to include a higher proportion of women.

All three countries have been exposed to varied migratory pressures: Ukraine and Belarus lie on the main migratory routes to the European Union. They have experienced the consequences of stranded asylum seekers populations coming not only from other CIS countries, but from further afield: for example, from South-East Asia and from the Middle East. Moldova has not yet been strongly affected by such flows. In order to cope with various situations on the ground the countries have established specific migration policies that include cooperation with their two biggest neighbours: the European Union and the Russian Federation. Belarus is not party to the European Neighbourhood policy and it is a rather reluctant partner of the Eastern Partnership Initiative. However, it is a member of the EurAsEC Customs Union and Eurasian Economic Community, cooperating on migration at the

bilateral level with EU Member States and other regional partners outside these frameworks. Ukraine and Moldova have had a more EU-focused agenda in migration terms, both being among the first wave to sign and implement the bilateral and EU readmission agreements and visa facilitation agreements. In both countries, migration and asylum legislation has undergone considerable changes as a consequence of implementing the EU Visa Liberalisation Action Plans. However, in all three cases border management, the fight against irregular migration, trafficking in human beings as well as asylum policies have been at the top of the agenda, while considerations on migration and development and diaspora policies have emerged as a political priority only in Moldova. Moldova is the only Eastern European country that signed the EU Mobility Partnership and, in fact, Moldova has developed a rich policy portfolio of initiatives in the domain of migration and development. It is also the only country with a specialized legal framework on integration.

We have gathered here the fruit of over two years work done by the CARIM-East network of correspondents. We propose a collection of informative chapters on various migration topics, treated from three perspectives: demographic, legal and socio-political. We can only hope that it will help the reader to understand the impact of migration and mobility in the region.

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# **CHAPTER 1**

## **Statistical Data Collection on Migration**



**Statistical Data Collection on Migration  
in the Republic of Belarus**

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## Introduction

Information on migration in Belarus is mainly gathered via 2 kinds of official sources, namely those produced by the National Statistical Institute (section 1) and those produced by the Ministry of Interior (section 2). Both apply to emigration and immigration.

### 1. Sources produced by the National Statistical Institute

- **Residence registration system**

The residence registration system collects data on inward and outward flow migration data. Both *de iure* and *de facto* populations are covered.

The current residence registration system was created back in Soviet times and no relevant changes have been made to the system since 1991. This system is based on specific forms of statistical surveillance: coupons or cards for a count of migrants. These forms are completed in militia departments or by other authorities in charge of population registration. They apply to those who register in a given locality (immigrants) and also to those who de-register from a place of residence by going abroad (emigrants). Currently, migration information is structured in accordance with the following attributes: sex, age, self-declared nationality, level of education, civil status, country of origin/destination and reasons for arrival/departure and so forth. Information on the above attributes is provided for all the flows in total and then separately only for external migration.

Since 2008, the flows of migrants have been separated by type of registered population, i.e. *de jure* population and *de facto* population. So there are two categories of migrants: permanent (long-term) migrants, who are registered in a permanent place of residence, and temporary migrants, who are registered in a temporary place of stay. The term of registration in a place of stay is limited to 1 year after which people must register in their place of residence. The most complicated aspect linked to the measurement of temporary migration is that those who register in a given locality, do not typically deregister from their place of residence when they go away.

- **Population census**

The census collects data on the immigration stock and some information on migration flows. Both *de iure* and *de facto* populations are covered.

Over the territory of contemporary Belarus, *population censuses* have been conducted 10 times, the last in 2009. It is one of the most fundamental and significant methods of gaining information on migration. Indeed, it is possible to get data on immigrants (by country of birth and country of citizenship) and on emigrants who had been temporarily working abroad within 1 year, but no more. A census allows migrants not only to update information on the number of labour emigrants and immigrants, but also to collect their socio-economic characteristics. Based on the census results, an adjustment of migrants residing in the territory of the Republic of Belarus and the emigrants who work abroad is carried out using the residual method due to inaccuracies of migration statistics (mostly because of open borders within CIS territory). Population stocks in the intercensus period (2000-2009) and migrants flows in 2005-2009 have thus been adjusted thanks to the 2009 census results.

## 2. Sources produced by the Ministry of Interior – Department of Citizenship

- **Permits granted to people to go abroad for permanent residence; residence permits issued to migrants in Belarus; the acquisition and renunciation of Belarusian nationality; persons having received a right to employ the foreign labor force.**

With citizenship we come across a number of difficulties. An individual who has been in the country for more than 90 days and for no more than 1 year receives a permit for temporary residence (temporary migration). The result is a relatively precise record for migrants from non-CIS countries. If an immigrant plans to stay in the country for more than a year, s/he may apply for a permit for permanent residence (permanent migration). A foreign national shall receive a residence permit for registration at the place of residence and inclusion for statistical observation. Still, s/he may do it a considerable time after their arrival or may not, even, do it all. It is noteworthy that, in the former republics of the USSR, a specific migration regime has been created whereby thousands of migrants are involved in short-term movements for the purpose of temporary employment. A visa-free system simplifies movements between the countries, and many migrants do not apply for permanent residence status and many do not intend to change citizenship. Families of these migrants stay back at home, in the country of departure. In part this situation is related to certain drawbacks in legislation and difficulties in receiving a residential status. On the one hand, if an individual aims to stay in Belarus, it is advantageous to receive a residence permit, as it means practically equal rights with citizens (with a few exceptions such as voting rights). On the other hand, not all immigrants have the right to apply for a permanent residence permit. It is necessary to have grounds for such a request<sup>1</sup> with no previous convictions and so forth. As a result, many migrants live and work in Belarus for several years, and the imperfection of migration statistics mean that it is impossible to adequately measure these migrants.

- **Data on migrants arriving in the Republic of Belarus and applying for refugee status or protection.**

Data on asylum seekers and refugees is structured in accordance with the following characteristics: country of origin (mostly citizenship, but not necessary), age groups, regions of residence and nationality.

## 3. Additional sources

Additional sources are then found in a number of **specific research projects** developed in recent years aimed at collecting specific data on a country's population and migration flows. These include:

- Research on youth labour migration 2005-2006 financed by the Belarusian National Fund of Fundamental Research;
- In order to study the specific nature of non-return youth migration under the international project 'Migration: Theory, Methods and Practice of Regulating Migration Processes', a joint team of

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<sup>1</sup> A permanent residence permit is, indeed, issued to foreign nationals who are: close relatives of citizens of the Republic of Belarus permanently residing in the Republic of Belarus; individuals granted a refugee status or asylum in the Republic of Belarus; individuals who have the right for family reunification; have lawfully resided in the Republic of Belarus for the last seven or more years; individuals who have grounds for receiving citizenship of the Republic of Belarus as a registration procedure; those who were earlier citizens of the Republic of Belarus; those who have been employees and specialists sought by organisations of the Republic of Belarus; those who have exceptional skills and talent or extraordinary accomplishments in the Republic of Belarus, those with major achievements in the area of science, technology, culture or sports; foreign investors offering investments of at least a hundred and fifty thousand Euros for investments in the territory of the Republic of Belarus; ethnic Belarusians or their natural relatives down a direct descending line – children, grandchildren, great-grandchildren born outside the territory of the contemporary Republic of Belarus.



experts carried out a survey among young people from Belarus who left for work in the US during the summer holidays and who did not return to Belarus after the expiry of their visas;

- The research by the Scientific and Research Institute of the Ministry of Labour carried out in 1998 enabled the assessment of prospects of external labour migration, directions of potential migration flows as well as 'push' and 'pull' factors and conditions, not to mention typical qualitative and quantitative parameters;
- The development of cross-border cooperation and problems of frontier migration between Belarusian regions adjacent to the border and respective regions of Russia, Ukraine and other countries were studied by Shakhotska Liudmila under the Independent Research Council on Migration project within the CIS countries and the Baltic states on cross-border migration.
- The Balance Sheet of Labor Resources provides new regular sources of information about emigration. It contains information about citizens of the Republic of Belarus who are working abroad. Information is based on the results of a sample survey on employment issues. The first results have been received for 2012. However, they are not widely disseminated and remain in the possession and at the disposal of Belstat, the Ministry of Labor and Social Protection, and the National Bank. Data collection is conducted once per quarter. The sample population is 7000 households per quarter, and 28,000 per year. The method uses a sample without repetition.

Inward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+) and drawbacks (-) compared with other sources
<b>Belarusian Population Census</b>	National Statistics Committee.	<p>It is possible to find two migrant groups:</p> <ol style="list-style-type: none"> <li><b>Long-term migrants</b>, i.e. de iure population (permanent residence)</li> <li><b>Short-term migrants</b>, i.e. de facto population (temporary stay).</li> </ol> <p>The time criterion used to separate long- and short-term migrants is 1 year.</p> <p>In order to identify migrants three types of criteria are available:</p> <ol style="list-style-type: none"> <li>Country of birth;</li> <li>Country of citizenship;</li> <li>Nationality.</li> </ol>	Sex, age, level of education, occupation.	Development of key methodological approaches to organising and conducting population censuses was based on the national and international experience of conducting population censuses as well as United Nations recommendations in this field.	<p>(+) In the absence of a Population Register, a census is the basic source of data on the number of migrants living in the country;</p> <p>(+) Key demographic characteristics of migrants become available;</p> <p>(+) Is the basis for sampling observations;</p> <p>(-) Expensive;</p> <p>(-) Information becomes outdated.</p> <p>(-) It covers only the migrants who were residents at the moment of a census, and does not cover immigrants who had left earlier;</p> <p>(-) A census programme focuses more on migrants' characteristics than on migration events.</p>
<b>Main info:</b> universal data collection; stock data.					
<b>Periodicity:</b> roughly every 10 years. In total 10 censuses were conducted (1897, 1920, 1926, 1939, 1959, 1969, 1979, 1989, 1999, 2009).					

Inward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+) and drawbacks (-) compared with other sources
<b>Residence registration system</b>  <b>Main info:</b> Primary source; flow data  <b>Periodicity:</b> Continuous registration; (monthly and annual).	National Statistics Committee.	<p>The definition 'arrivals' is used. <b>Arrivals</b> include people who register in a place of permanent residence (i.e. de iure population) in the Republic of Belarus in a given period, usually for one year.</p> <p>In order to identify <b>immigrants</b>, the country of previous residence criterion is used (thus also including Belarusian return migrants).</p>	Available characteristics: sex, age, nationality, conjugal status, level of education, reason for arrival.	The Home Affairs bureaus submit migrants count coupons to statistical entities at least once a month. From the coupons, the processing of data on population migration covers coupons that refer to nationals changing their permanent place of residence, as well as citizens arriving to study for more than 1 year.	<p>(+) Data are collected regularly allowing experts to build extended time series of comparable data;</p> <p>(+) Key socio-demographic characteristics are available;</p> <p>(-) Data handling from primary documents is outdated. For example, in Belarus data on the place of birth are gathered but are not entered and thus are unavailable for processing. Some of the columns are not filled in and/or checked;</p> <p>(-) Despite since 2008 the system has used to separate permanent (i.e. population registering in a place of permanent residence or de iure population) from temporary (i.e. population registering in a place of stay or de facto population) population, no info on temporary records is processed for statistical purposes, i.e. data on temporary migrants are not available.</p>

Inward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+)and drawbacks (-) compared with other sources
<b>Administrative reporting</b>	Department of Citizenship and Migration of the Ministry of the Interior.	It covers <b>permanent and temporary migrants</b> . Migrants are defined as <b>permanent residents</b> when s/he has received a permanent residence permit issued by a Home Affairs bureau. (de jure population).	a. Number of permits to employ foreign labour force (stay/work permits) that were given by employer not by the employee. b. Number of residence permits. c. Number of persons who received Belarusian citizenship.	Citizenship decisions as regards persons with permanent residence in the Republic of Belarus are carried out by the Home Affairs bureaus and as regards persons living abroad – by diplomatic services. Record-taking follows the number of consents granted to applications for acquiring citizenship in the Republic of Belarus.	(+) Quite an extended time series of data is available; (-) No distribution even by sex or age; (-) The statistics of granted citizenship are to a certain extent affected by the political context. Immigrants receive citizenship first and then register as immigrants-citizens of the Republic of Belarus. Hence the number of immigrants- is much lower than the number of persons receiving citizenship; (-) A considerable number of labour migrants work illegally. Hence the statistics of work permits so far cannot provide information on the number of long-term labour migrants from abroad who stay in the country. (-) Only instances of issuing permits and not the real number of employees are registered. Besides, entitlement to employ the labour force does not guarantee the arrival of workers.
<b>Main info:</b> Primary source; flow data.		Migrants are defined as <b>temporary stayers</b> when s/he has received a temporary stay permit. (de facto population).  In order to identify migrants, the <b>country of citizenship</b> criterion is used.			
<b>Periodicity:</b> Annual					

Inward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+) and drawbacks (-) compared with other sources
<b>Border card system</b>	State Customs Committee.	<b>Foreign nationals crossing the border</b>	Number of foreign nationals crossing the border by country. Can be by sex and age, reason for arrival.	Passengers fill in a migration card (on a train, plane and sometimes on a bus) and hand it over to a customs officer on entering the territory of Belarus.	(+) It is possible to compare data from the Ministry of the Interior (e.g. the number of migrants from non CIS countries, who have to receive a temporary stay permits) with the number of border crossings; (-) Incomplete records. Not completed by migrants crossing the border by car, rarely completed by those travelling by bus; (-) Information entered on the cards is not checked; (-) Information provided is not fully used.
<b>Main info:</b> Primary data; flow data.					
<b>Periodicity:</b> Annual.					

Inward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+)and drawbacks (-) compared with other sources
<b>State Statistical Monitoring of Higher Educational Institutions</b>	State Statistics Service of Ukraine.	<b>Foreign students</b> at higher educational institutions. Foreign students are foreign nationals admitted under special permits or visas allowing them to undertake a course of study in an accredited Ukrainian higher educational institutions.	a. Number of foreign students by the level of accreditation of higher educational institutions (I-II vs. III-IV) and regions in Ukraine; b. Number of foreign students by the level of accreditation of higher educational institutions (I-II vs. III-IV), ownership type and the responsible Ministry (State Agency) for state-owned institutions; c. Number of foreign students by the level of accreditation of higher educational institutions (I-II vs. III-IV) and the origin country – total number of students, number of first-year students, number of graduates.	Data collection based on reporting of all accredited higher educational institutions with two statistical forms on the number and composition of students in the beginning of an academic year.	(+) Universal coverage of target population throughout Ukraine; (+) Reliable and publicly available information; (-) Foreign students form only a small proportion of foreign communities in the country.
<b>Main info:</b> Primary source; stock and flow data.					
<b>Periodicity:</b> Continuous registration; Annually (by academic year, starting in September and ending in June-July).					

Outward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+) and drawbacks (-) compared with other sources
<b>Belarusian Population Census</b>  <b>Main info:</b> Primary source; universal data collection; stock data  <b>Periodicity:</b> roughly every 10 years. In total 10 censuses were conducted (1897, 1920, 1926, 1939, 1959, 1969, 1979, 1989, 1999, 2009).	National Statistics Committee.	It is possible to get 2 group of migrants:  - <b>population residing abroad at the moment of the census</b> (group1) - <b>population having resided abroad for more than 1 year within the period 2005-2009 but present in Belarus at the moment of the census</b>	Available characteristics on the population residing abroad at the moment of the census: type of settlement, country of the actual place of work; age, level of education.  Available characteristics on the population residing having resided abroad for more than 1 year within the period 2005-2009 but present in Belarus at the moment of the census: previous country of residence, education level; reason for departure; citizenship.	Development of key methodological approaches to organising and conducting population censuses was based on the national and international experience of conducting population censuses as well as United Nations recommendations in this field.	(+) Key demographic characteristics of migrants become available; (+) Is the basis for sampling observations; (-) Insufficient credibility of information on emigration. It is impossible to fully describe who was absent during the census for a series of reasons, among which household who entirely left cannot be captured; (-) Lack of important variables on the stock of emigrants abroad at the moment of the census, e.g. reason for departure and length of stay abroad. (-) Expensive; (-) Data become outdated.
		In order to identify (labour) migrants, the actual place of <b>work criterion</b> is used.			

Outward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+) and drawbacks (-) compared with other sources
<b>Residence registration system</b>	National Statistics Committee.	The definition 'departures' is used. <b>Departures</b> include all people <b>who deregister from a place of permanent residence</b> (i.e. de iure population) in the Republic of Belarus for residing abroad in a given period, usually one year.	Available characteristics: country of destination, sex, age, family status, level of education and reason for departure.	The home affairs bureaus submit migrants count coupons to statistical entities at least once a month. Studies of migration within the country include statistical migrants count coupons of incomers. Emigration per region is estimated based on arrival coupons characterised by the territory of departure.	(+) Data are collected regularly allowing experts to build extended time series of comparable data; (+) Key socio-demographic characteristics are available; (-) Data handling from primary documents is outdated. For example, in Belarus the data on the place of birth are gathered but are not entered and thus are unavailable for processing. Some columns are not filled in and/or checked.
<b>Main info:</b> Primary source; flow data.					
<b>Periodicity:</b> Continuous registration; (monthly and annual).					
<b>Administrative reporting</b>	Department of Citizenship and Migration of the Ministry of the Interior.	It covers <b>persons who renounce Belarusian citizenship</b>	Total number of persons who have renounced Belarusian citizenship.	Citizenship decisions as regards persons with permanent residence in the Republic of Belarus are carried out by the home affairs bureaus, and as regards persons living abroad – by diplomatic services. Record-keeping covers the number of consents granted to applications for renouncing citizenship of the Republic of Belarus	(+) Quite an extended time series of data is available; (-) No distribution even by sex or age;
<b>Main info:</b> Primary source; flow data.					
<b>Periodicity:</b> Annual					



Outward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+) and drawbacks (-) compared with other sources
<b>Balance Sheet of Labor Resources</b>	Belstat, Ministry of Labor and Social Protection, National Bank	Belarusian citizens working abroad	-	Since 2012, a survey is conducted once per quarter. The sample population is 7,000 households per quarter and 28,000 per year. The method uses a sample without repetition.	(+) there are no other analogues of regular surveys that include questions related to migration (-) Results are not disseminated, and remain in the possession of Belstat, the Ministry of Labor, and the National Bank

**Data accessibility:** Population Census and Residence registration system ([www.belstat.gov.by](http://www.belstat.gov.by)); Administrative reporting ([dcm@mia.by](mailto:dcm@mia.by)): available upon request; Border card system ([gtk@customs.gov.by](mailto:gtk@customs.gov.by)): data are not available; State Statistical Monitoring of Higher Educational Institutions (Basic info is published in the special statistical edition “Main indicators of the activity of higher educational institutions”); Balance Sheet of Labor Resources (Data are not disseminated).



**Statistical Data Collection  
on Migration in Moldova**

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*Demographic and Economic Module*



## Introduction

Currently, at least 10 Moldovan ministries and institutions deal with various international migration issues. In addition most of the local delegations of international institutions, numerous NGOs and several foreign embassies are involved in programs which involve international migration.

### List of sources of international migration in Moldova

Type of migration	Source	Type of source	Population	Definition of migrants
<b>Outward migration</b>	Population Census (October 2004)	Stock	<i>De jure</i>	Persons who live permanently in households residing in Moldova, but who were temporarily abroad at the moment of the interview.
	Labour Force Survey (continuous)	Stock	<i>De jure</i>	
	Labour Force Migration Survey (second quarter of 2008)	Stock	<i>De jure</i>	Persons who live permanently in households residing in Moldova, and who were abroad working or searching for work in the 12 months, preceding the interview.
	State Register of Population (continuous)	Stock/Flow	<i>De jure – de facto</i>	Citizens of Moldova who went abroad for permanent or temporary residence (over 3 months).
<b>Inward migration</b>	Population Census (October 2004)	Stock	<i>De jure</i>	Persons who live permanently in households residing in Moldova, but who were not born in Moldova.
	Population Register (State Register of Population – SRP) (continuous)	Stock/Flow	<i>De jure – de facto</i>	Persons, who are permanently residing (over 5 years) or have been temporarily staying (up to 5 years) on the territory of the Republic of Moldova.

The National Bureau of Statistics (NBS) develops and implements the main data collection sources: census, labour force and household budget surveys. International institutions (International Organization for Migration (IOM), World Bank (WB), European Commissions, etc.) finance surveys targeting emigration and remittances. In addition, there are several administrative sources, developed and maintained by ministries that are directly or indirectly involved in regulating the migration process, collecting data on persons crossing national borders.

## Flow and stock data sources

Most of these administrative databases are managed using computerized data management systems and some statistical data are disseminated, being publicly accessible. To make use of the great potential of these administrative data sources and in order to increase the cooperation between ministries working with international migration, an integrated automated information system (**SIAMA**) has been developed.

In addition, the information system developed by the State Information Resources Centre (**SIRC**) “Registru” and the Ministry of Information Technology and Communication, have allowed the linking of several **individual databases** for operational investigations in order to increase the cooperation between ministries. The SIRC “Registru” also collects data, produces and updates 24 statistical tables designed to summarize the data produced by each ministry involved in SIAMA. Tables produced by SIAMA should allow a direct benchmarking of the different aspects of the migration policy in Moldova. Data offered by the SIAMA system are integrated in the State Register of Population (SRP), managed by the SIRC “Registru”, complementing the main component of the SRP: “Physical Persons Records”. The SRP offers stock and flow numbers of the population, comprised of persons, who are permanently residing or temporarily staying in the Republic of Moldova.

A foreign national can stay in Moldova for up to 5 years, with a temporary stay permit. After staying continuously in Moldova for 5 years (3 years for foreign nationals married to a Moldovan citizen), the foreign national can obtain a permit to permanently reside in Moldova, if all legal requirements are met. Moldovan citizens, temporarily staying abroad, but having a permanent residence in Moldova (i.e. they did not de-register themselves) are also counted among the *de jure* population. At present, researchers studying migration in Moldova are particularly interested in the problem of developing a universal definition for the “migrant” (emigrant) that could be used in different surveys/administrative sources to produce comparable data.

## Conclusion

Although complex, with several interacting data sources, the migration data collection system in Moldova has its weak points. The SRP cannot yet be considered a fully reliable source for international migration. Major limitations affecting the coverage of the SRP include:

- The main problem is the low level of de-registration for citizens leaving the country. Persons leaving for 12 months and more still keep their permanent residence in Moldova. Consequently, the number of international emigrants and the repatriation of Moldovan citizens is largely under-estimated;
- Two age groups are temporarily but significantly underrepresented: 1. Children currently between 8 and 14 years old, born before the application of the system of documentation at birth in 2002, and not yet documented as citizen at 14 years old, the age required by the law; 2. Persons around 62 to 67 due to the fact that some persons were not documented through the “Pensioners Project” as they were still working at the time this project was implemented;
- Not all the citizens who live in the Transnistria region have requested their documents and, therefore, these are not present in the register;
- More than 60,000 persons are registered in the State Registry of Population without having a registered address of place of residence;
- The changes in permanent residence do not correspond to the international definition of change for at least 12 months;
- There is no specific operation to measure the coverage of the population register. The Registru Centre proposed to include the ID number in the questionnaire of the Census 2013 to check and update the population register;

- Entities contributing to and managing the SIIAMA system do not have the skills to make the data meet the international requirements for international migration statistics and so to support policy development. Stronger cooperation with the NBS is needed;
- Surveys conducted by the NBS are limited in sample size and, therefore, do not always capture immigration in said surveys;
- Most important data sources offer data on labour emigration as this is the main problem faced by Moldova and many policies have been developed to find ways to manage the problem.

## Data sources and providers

Several ministries and institutions in Moldova possess information that is related to international migration or is relevant to migration policies:

- National Bureau of Statistics – central statistical authority that manages and organizes statistical activity in Moldova.
- Ministry of Information Technology and Communications, “SIRC “Registru” - is responsible for providing statistical data that are part of the SIIAMA. “SIRC “Registru” is also the owner of the State Register of Population.
- Border Guard Service – provides information on state border crossing (entry/exit)
- Ministry of Labour, Social Protection and Family - Prevention of Violence and Insurance of Gender Equality Policy Department, Protection of Family and Children’s Rights Department, Migration Policy Section, National Coordination Unit of the National Referral System for Assistance and Protection of Victims and Potential Victims of Trafficking (NRS) and the National Employment Agency
- Ministry of Internal Affairs - Bureau for Migration and Asylum in charge of the SIIAMA and the Centre for Combating Trafficking of Persons
- Ministry of Foreign Affairs and European Integration
- Ministry of Education
- Ministry of Health
- National Company for Health Insurance
- National Social Insurance House
- National Bank of Moldova – Balance of Payments Department

However, only a few of these institutions disseminate statistical data. In addition other institutions are managing *ad-hoc* databases but are not producing any statistical data save data for their own internal use.

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Inward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+) and drawbacks (-) compared with other sources
<b>Moldovan Population Census</b>  <b>Main info:</b> Primary source; stock data.  <b>Periodicity:</b> every 10 years. Last census: 2004, next one: 2014.	National Bureau of Statistics (NBS).	Population census covers persons who live permanently in households residing in Moldova ( <b>resident permanent population, <i>de iure</i> population</b> ). <b>Immigrants</b> are defined according to the country of birth criterion.	Population by country of birth and country of citizenship according to number of years lived in Moldova.	Data collected through personal interviews, using paper questionnaires.	(+) Small errors, enough cases for tabulation; (-) Data is old.
<b>SIAMA (Integrated automated information system "Migration and Asylum")</b>  <b>Main info:</b> Primary source; Administrative source; stock and flow data.  <b>Periodicity:</b> Continuous registration; Monthly.	Data is collected by 11 governmental institutions. SIRC "Registru" (see below) manages the system, tabulates and disseminates the data. The system offers data on both visitors and immigrants.	<b>Foreign citizens or stateless persons</b> who have obtained the right to live <b>permanently or temporarily</b> in Moldova, according to the legal requirements. These persons are included into the <i>de iure</i> population.	Foreign citizens or stateless persons by country of previous residence, reason for immigration, country of citizenship.	Data collection based on official documents issued by governmental institutions.	(+) Continuous data collection; (+) Low cost; (-) The system is not fully operational yet; (-) Data is collected for administrative purposes, therefore the methodological base is weak; (-) Few variables.



Inward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+) and drawbacks (-) compared with other sources
<b>State Register of Population (SRP)</b>  <b>Main info:</b> Administrative source; stock and flow data.  <b>Periodicity:</b> Continuous registration; Monthly.	Data collected, processed and disseminated by SIRC "Registru".	SRP covers persons who are <b>permanently residing</b> or <b>temporarily staying</b> in Moldova. A <b>foreign citizen</b> can stay in Moldova for up to 5 years, based on temporary stay permit. After staying continuously for 5 years in Moldova (3 years for foreign nationals married to a Moldovan citizen), the foreign national can obtain a permit to permanently reside in Moldova, if all legal requirements are met.	Country of citizenship.	Data collected based on official documents issued by the SIRC "Registru".	(+) Continuous data collection; (+) Low cost; (-) The system is not fully operational yet; (-) Data are collected for administrative purposes, only based on official documents, therefore the methodological base is weak and data are updated with delays.

Outward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+) and drawbacks (-) compared with other sources
<b>Moldovan Population Census</b>	National Bureau of Statistics (NBS).	Population census covers persons who reside permanently in households in Moldova ( <b>resident permanent population</b> ), but who were <b>temporarily abroad</b> at the moment of the interview.	Reason for staying abroad; year of emigration.	Data collected through personal interviews, using paper questionnaires.	(+) Small errors, enough cases for tabulation; (-) Data is old. (-) Underestimation of emigrants because migrated households are not captured
<b>Main info:</b> Primary source; stock data					
<b>Periodicity:</b> every 10 years. Last census: 2004, next one: 2014					
<b>Labour Force Survey (LFS)</b>	National Bureau of Statistics (NBS).	LFS covers persons who reside permanently in households in Moldova ( <b>resident permanent population</b> ), but who were <b>temporarily abroad</b> at the moment of the interview.	Reason for staying abroad; time spent abroad (less than one year or more than one year); destination country.	Data collection through a two-stage stratified cluster sample survey, personal interviews, using paper questionnaires. Sample size: 4000 households per month.	(+) Methodology based on ILO recommendations; (+) A wide set of characteristics available; (+) Continuous data collection; (-) Underestimation of migrants because migrated households are not captured.
<b>Main info:</b> Sample survey; stock data					
<b>Periodicity:</b> Continuos.					

Outward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+) and drawbacks (-) compared with other sources
<b>Labour Force Migration Survey (LFMS)</b>  <b>Main info:</b> Sample survey; stock data  <b>Periodicity:</b> <i>Ad-hoc</i> module to LFS, 2nd quarter, 2008	National Bureau of Statistics (NBS).	LFMS covers persons who live permanently in households residing in Moldova ( <b>resident permanent population</b> ) and who in the 12 months, prior to the interview, <b>worked or searched for work abroad</b> .	Migration reasons; migration channels; migration costs; destination country; time spent abroad; work conditions abroad; future plans, etc.	Data collected through a two-stage stratified cluster sample survey, personal interviews, using paper questionnaires. Data were collected from a) returned migrants and b) relatives of migrants.	(+) Methodology based on ILO recommendations; (+) A wide set of migration-related characteristics available; (-) Inaccurate data in case of proxy interviews with relatives of migrants; (-) Underestimation of migrants because migrated households are not captured.
<b>SIAMA (Integrated automated information system "Migration and Asylum")</b>  <b>Main info:</b> Primary source; Administrative source; flow data  <b>Periodicity:</b> Continuous registration; Monthly.	Data is collected by 11 governmental institutions. SIRC "Registru" (see below) manages the system, tabulates and disseminates the data. The system offers data on both visitors and immigrants.	<b>Moldovan citizens who cross the border</b> for different reasons. It refers to <b>both migrants and non-migrants</b> .	Time spent abroad.	Data collection based on official documents issued by governmental institutions.	(+) Continuous data collection; (+) Low cost; (-) The system is not fully operational yet; (-) Data is collected for administrative purposes, therefore the methodological base is weak; (-) Few variables.

Outward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+) and drawbacks (-) compared with other sources
<b>State Register of Population (SRP)</b>	Data collected, processed and disseminated by SIRC "Registru".	SRP covers <b>Moldovan citizens who go abroad for permanent residence</b> and de-registered their residence in Moldova).	Destination country.	Data collection is based on official documents issued by the SIRC "Registru"	(+) Continuous data collection; (+) Low cost; (-) The system is not fully operational yet; (-) Data are collected for administrative purposes, only based on official documents, therefore the methodological base is weak and data are updated with delays.
<b>Main info:</b> Primary source; Administrative source; stock and flow data.					
<b>Periodicity:</b> Continuous registration; Monthly					
<b>Household survey on labour migration and remittances</b>	Data collected by a private company "CBS-AXA"	It covers <b>persons abroad either currently or during the 12 months before the survey.</b>	Migration reasons; migration channels; migration costs; destination country; time spent abroad; work conditions abroad; future plans, etc	Data collected through a sample survey, personal interviews, using paper questionnaires	(+) Panel design; (+) A wide set of migration-related characteristics available; (-) Underestimation of migrants because migrated households are not captured; (-) Inaccurate data in case of proxy interviews with relatives of migrants.
<b>Main info:</b> Sample survey					
<b>Periodicity:</b> Panel design (2004-2006-2008)					

**Data accessibility:** Population Census (<http://www.statistica.md/pageview.php?l=en&idc=295>); SIIAMA: some tables are published by the NBS; others upon request; SRP ([http://www.registru.md/stat3\\_en/](http://www.registru.md/stat3_en/));

LFS (<http://statbank.statistica.md/pxweb/Database/EN/03%20MUN/MUN07/MUN07.asp>, <http://www.statistica.md/pageview.php?l=en&id=2204&idc=263>): additional data available upon request; LFMS (<http://www.statistica.md/pageview.php?l=en&idc=350&id=2570>): additional data available upon request; Household survey on labour migration and remittances ([http://iom.md/attachments/110\\_2009\\_05\\_05\\_remmit\\_boom\\_over\\_eng.pdf](http://iom.md/attachments/110_2009_05_05_remmit_boom_over_eng.pdf)).

**Statistical Data Collection  
On Migration In Ukraine**

**OLEKSII POZNIAK**

*Demographic and Economic Module*



## **Introduction**

National statistics (official data) in Ukraine on migration issues include state statistics, such as information collected by the **State Statistics Service of Ukraine and ministerial statistics**, and data collected by the ministries and state agencies on given aspects of migration. Here and below all the institutional establishments in Ukraine are listed under their current names: in April 2011 a complete reorganisation of these authorities was made, and a number of establishments were renamed or combined with other establishments. In 2012, the Ministry of Revenue and Duties of Ukraine was established by a merging of the State Tax Service and the State Customs Service of Ukraine. In 2013, the Ministry of Education and Science, Youth and Sports of Ukraine was divided into the Ministry of Education and Science of Ukraine and the Ministry of Youth and Sports of Ukraine.

## **1. Sources of the State Statistics Service of Ukraine**

### **1.1. Population census**

The first all-Ukrainian **population census** was carried out in 2001 (the census date – December 5, 2001). The next census, originally planned for 2011, was postponed until 2012, and then again until 2013, and now has been postponed until 2016. The 2001 census programme included 19 questions. The following questions referred to the record of resettlements: Question No. 3 on the type of residence (permanent residence, temporary residence or temporary absence); Question No. 5 ‘Your place of birth’; Question No. 8 ‘Your citizenship’; Question No. 16 ‘Your place of work’ (within the residence area or any other area); Question No. 18 ‘Have you resided in this location continuously since birth?’. Based on the census results, a number of statistical collections have been published, including ‘Population of Ukraine by Birthplace and Citizenship’ as well as ‘Population Migration’.

### **1.2 Current record of changes of place of residence**

The system is carried out by way of direct registration (removal from the register) at the place of residence. Registration forms are completed for individuals who arrived at the place of residence for 6 months or longer. Registration is carried out by entities of the State Migration Service of Ukraine but the data are processed by the State Statistics Service. Currently only information contained in identification documents is entered; previously more extensive information was collected.

### **1.3 Labour Force Survey**

The Labour Force Survey is carried out monthly. A study questionnaire includes an answer option of ‘S/he is abroad’ to the question on the reasons for household member’s absence and an option ‘Outside Ukraine’ to the question on the individual’s place of work. Information from the respective questions is not processed on a regular basis. Questions on the number of persons with permanent residence in the Ukraine who work temporarily, seasonally or permanently abroad, are included in the form of two regular studies. Yet the quality of this information is not entirely satisfactory: the number of labour migrants is underreported, since collection of this information is not the main objective of the study.

### **1.4 Records on persons with an academic degree**

Besides, the State Statistics Service gathers information about emigrants with academic degrees (records cover only those individuals who used to work in scientific and educational institutions prior to emigration).

## 2. Sources of various Ministries

Statistical data on migration are collected by the State Migration Service of Ukraine, the State Border Service of Ukraine, the State Employment Service of the Ministry of Social Policy of Ukraine, the Ministry of Foreign Affairs of Ukraine, and the Ministry of Education and Science of Ukraine. In addition, a number of departments (the Ministry of Revenue and Duties of Ukraine, the Pension Fund of Ukraine, the State Judicial Administration of Ukraine, and others) track the citizenship of persons subject to registration in their departmental statistics. Data collection on migration by the above institutions is regulated by internal orders and ordinances. The administrative data of the above ministries and departments is partially transferred to the State Statistics Service of Ukraine.

Ukraine's embassies and consular services abroad fill out **consular records** on Ukrainian citizens. These data may be unified based on the data of all the diplomatic representations for a given period following a special inquiry of the state authorities. The Ministry of Foreign Affairs does not gather continuous statistics from consular records at the national level.

The State Migration Service of Ukraine was established on the basis of the now abolished State Committee on Nationalities and Religions of Ukraine as well as a number of entities of the Ministry of the Interior. The State Employment Service of the Ministry of Social Policy of Ukraine submits data on Ukrainian citizens temporarily working abroad (employed via licensed agencies) as well as on foreign nationals temporarily working in Ukraine. The State Migration Service submits data on refugees to the State Statistics Service, the State Border Service submits data on the number of individuals and cars allowed through the state border of Ukraine; the distribution of foreign nationals and stateless persons entering Ukraine, by purpose for their trip and citizenship; and the number of citizens of Ukraine leaving Ukraine. Information collected and distributed by the State Statistics Service is made available free of charge upon request of Ukrainian budgetary organisations as well as to representatives of international organisations in Ukraine. Information provided upon inquiries of other institutions, private persons and foreign nationals can be charged for. The same is true of census data covered by the programme of census data processing. Information not covered by census data processing can be presented to Ukrainian and foreign establishments upon request as a paid service (the price is high).

Administrative data of ministries and state agencies (apart from those submitted to the State Statistics Service) are not published or are published for internal use only. Administrative data of ministries and state agencies can be provided upon request; since the Ukrainian law "On Access to Public Information" was introduced, the degree to which requests are fulfilled has significantly increased.

## 3. Sources of the National Bank of Ukraine

The National Bank of Ukraine gathers statistics on the balance of payment, including, among other questions, remittances sent by Ukrainians working abroad. Thus, remittances sent via the banking system and international money transfer systems are registered. Financial resources brought via informal channels can only be estimated.

## 4. Specific sample surveys

Special sampling observations devoted to migration issues are carried out in Ukraine only by non-governmental organisations and do not have the status of official sources of information. The only migration studies of a conditionally official nature are the Studies of Labour Migration carried out in mid 2008 and mid 2012. The 2008 study was conducted as an additional module to two studies regularly run by the State Statistics Service and having an official status: the study of population economic activity and the study of household-living conditions. The 2012 study was conducted as an additional module only for the population survey (households) on economic activity.



## **Conclusion**

In general, the state of migration statistics in Ukraine is not fully satisfactory. The coverage of migrants, both immigrants and emigrants, based on the existing sources of information is not exhaustive. Frequently data on the same category of migrants coming from different sources are not congruent. The most striking example of this is the number of individuals arriving in Ukraine to study; the number of persons arriving in Ukraine for the purpose of studying (in accordance with the data of the State Border Service of Ukraine), the number of foreign nationals registered in entities of the Ministry of the Interior as students, and the number of students – foreign nationals or stateless persons who study at universities of Ukraine (in accordance with the data of the Ministry of Education, Science, Youth and Sports) do not correspond. The numbers differ considerably depending on the citizenship of students. Cooperation between the authorities of Ukraine on migration records is then clearly insufficient.

Inward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+) and drawbacks (-) compared with other sources
<b>Ukrainian Population Census</b>	State Statistics Service of Ukraine.	It covers <b>migrants</b> defined according to country of citizenship, place of birth, and lack of a continuous residence at current settlement.	Population distribution by country of citizenship and country of birth and according to duration of stay at a given place of residence, previous country of residence	<ol style="list-style-type: none"> <li>1. Data are collected on available and permanent population – the record covers individuals permanently residing in Ukraine, including individuals who have gone abroad (up to 1 year) and individuals on temporary residence; the record does not cover foreign nationals working in the diplomatic corps of their countries</li> <li>2. Information is based on statements of respondents; information on individuals who are temporarily away is based on statements of household members</li> </ol>	(+) Continuous observation; (-) Considerable time lapses; (-) Limited number of questions.
<b>Main info:</b> Primary source; stock data.					
<b>Periodicity:</b> Scheduled every 10 years; in reality the first intercensal period was 13 years, the second (according to the latest data) will be 15 years					

Inward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+) and drawbacks (-) compared with other sources
<b>Current record of changes of the place of residence.</b>	State Statistics Service of Ukraine (data processing and dissemination)	The term ‘arrivals’ is used. <b>Arrivals</b> include people who register in a place of residence for at least 6 months.	Arrivals by country of citizenship and country of origin and according to sex and age.	Data are recorded based on information provided in IDs.	(+) Gaining information on the socio-demographic characteristics of migrants at the moment of migration; (-) Incomplete coverage of individuals; (-) Limited information on arrivals.
<b>Main info:</b> Primary source; flow data					
<b>Periodicity:</b> Continuous registration;					
<b>Records of foreign nationals temporarily working in Ukraine.</b>	State Employment Service of Ukraine	It covers <b>foreign nationals temporarily working</b> in Ukraine	Number of foreign nationals temporarily working in Ukraine at the beginning and the end of the year, number of incomers and outcomers during a year and their socio-demographic characteristics.	Foreign nationals with work permits are accounted for.	(-) Data cover only officially working foreign nationals.
<b>Main info:</b> Primary source; stock and flow data					
<b>Periodicity:</b> Continuous registration					
<b>Records of foreign nationals in Ukraine.</b>	State Migration Service of Ukraine	It covers <b>registered foreign nationals.</b>	Number of foreign nationals registered with internal affairs bodies, number of identified illegal migrants, number of foreign nationals expelled from Ukraine,	Foreign nationals and stateless persons residing in Ukraine in a lawful manner are obliged to register with internal affairs bodies in an established order and leave Ukraine after the expiry of	(+) The most exhaustive source of information on foreign nationals residing in Ukraine.

<b>Main info:</b> Primary data; stock and flow data			number of foreign nationals with a ban on entering Ukraine, number of immigrants registered with internal affairs bodies, distribution of foreign nationals by country of citizenship and purpose of trip to Ukraine.	the respective period of stay. Identified illegal migrants are also registered.	
<b>Periodicity:</b> continuous registration					
<b>Records of refugees and asylum-seekers.</b>	State Statistics Service of Ukraine.	It covers <b>refugees and asylum seekers</b>	Number of applications seeking a refugee status; number of applications seeking a refugee status that are being processed; number of individuals granted a refugee status; number of individuals holding a refugee status at the beginning of the year; socio-demographic characteristics of refugees and their distribution by country of citizenship	An asylum seeker is determined by the application of a foreigner; refugee status is granted in accordance with the law.	(+) The only source of information on refugees.
<b>Main info:</b> Primary source; stock and flow data					
<b>Periodicity:</b> Continuous registration.					
<b>Crossing-border statistics</b>	The State Border Service	It covers <b>persons crossing the state border</b> including visitors.	Number of foreign nationals entering Ukraine, their distribution by the purpose of arrival and country of citizenship; number of individuals not allowed through the state border of Ukraine, number of individuals handed over to the border services of other states.	Account is taken of all the individuals crossing the border including individuals caught while attempting to cross the border illegally.	(-) In practice what is registered is not the number of people crossing the border but the number of border crossings – the same person can be registered several times; (-) It includes visitors.
<b>Main info:</b> Primary source; flow data.					
<b>Periodicity:</b> Continuous registration (aggregated by year).					

Inward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+) and drawbacks (-) compared with other sources
<b>Records of foreign students.</b>	The Ministry of Education and Science of Ukraine	It covers <b>foreign students</b> at Ukrainian universities.	Number of foreign students by country of citizenship	A foreign student is registered when passing entrance exams to the university and is removed from the record upon graduation or expulsion	(+) The most precise data on foreign students.
<b>Main info:</b> primary data; flow and stock data					
<b>Periodicity:</b> continuous registration					
<b>The state register of natural persons – tax-payers</b>	The Ministry of Revenue and Duties of Ukraine	It covers <b>foreign nationals registered as tax-payers</b>	Total number of foreign nationals registered as tax-payers	Information on citizenship is registered on a tax-payer's record card	(-) Prior to 2011 no info on detailed country of citizenship was recorded.
<b>Main info:</b> primary data;.					
<b>Periodicity:</b> continuous registration					

Outward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+) and drawbacks (-) compared with other sources
<b>Ukrainian Population Census</b>	State Statistics Service of Ukraine.	It covers <b>Ukrainians working abroad</b>	Number of individuals working abroad, their distribution by countries, types of activity, occupations, employment status, level of education.	<b>1.</b> Information is based on statements of respondents; information on individuals who are temporarily away is based on statements of their household members	(+) Continuous observation; (-) Considerable time lapses; (-) Limited number of questions.
<b>Main info:</b> Primary source; stock data.					
<b>Periodicity:</b> Scheduled roughly every 10 years; in reality the first intercensal period was 13 years, the second (according to the latest data) will be 15 years					

Outward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+) and drawbacks (-) compared with other sources
<b>Current record of changes of the place of residence.</b> <b>Main info:</b> Primary source; flow data <b>Periodicity:</b> Continuous registration;	State Statistics Service of Ukraine (data processing and dissemination)	The term 'departures' is used. <b>Departures</b> include people deregistering from the register at the place of residence with internal affairs for at least 6 months, having a foreign country as destination.	Departures by sex, age, country of origin, country of citizenship.	Data are recorded based on information provided in IDs.	(+) Gaining information on socio-demographic characteristics of migrants at the moment of migration; (-) Incomplete coverage of individuals; (-) Limited information on outcomers.
<b>Study of population economic activity</b> <b>Main info:</b> Sampling observation <b>Periodicity:</b> Monthly					
	The State Statistics Service	It covers <b>persons declaring a place of work outside Ukraine</b> at the moment of the observation.	Number of individuals working outside Ukraine, their socio-demographic characteristics.	A sample is formed using the procedure of stratified multi-layer selection and covers the following stages: exclusion of territories that cannot be studied; exclusion of population not subject to observation; stratification of the population total; selection of first-grade territorial entities; selection of second-grade territorial entities (only urban settlements); selection of households. Various selected households have different weights in the final data base. Employment of an individual during the last week before the study is taken into account.	(-) Data are not processed at this stage.

Outward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+) and drawbacks (-) compared with other sources
<b>Observations of labour migration issues</b>  <b>Main info:</b> Special observations as an additional module to the study of population economic activity (see above)  <b>Periodicity:</b> Special observations (2008 and 2012)	The State Statistics Service	Emigrant workers: 2008- persons of working age (women 15-54 years, men 15-59 years) who have been abroad for work at least once from January 2005 to the interview date in May-June 2008. Cross-border commuters are not taken into account.  2012- persons aged 15-70 years who have been abroad for work at least once from January 2010 to the interview date in May 2012. Cross-border commuters are not taken into account.	Working-age citizens of Ukraine involved in paid economic activity on the territory of other countries on a permanent, seasonal or temporary basis. a) Many important characteristics of migrants (who are either living abroad or have returned) such as: gender; age; level of education; region of origin; reason for overseas employment; profession; type of economic activity in the host country and before departure abroad; intention to extend stay abroad; willingness and ability to return to Ukraine; country of destination; frequency of travel and length of stay abroad. b) Basic information about remittances and household expenditures	A sample is formed using the procedure of stratified multi-layer selection and covers the following stages: exclusion of areas that cannot be studied; exclusion of population not subject to observation; stratification of the population total; selection of first-grade territorial entities; selection of second-grade territorial entities (only urban settlements); and selection of households. Various selected households have different weights in the final data base.	(+) The source of the most exhaustive data on labour migration.



Outward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+) and drawbacks (-) compared with other sources
<b>Statistical record of the development of rural settlements</b>	The State Statistics Service	It covers <b>rural population working abroad</b> (no exact definition)	Total number of rural citizens working abroad	The form is completed by the chairman of the rural council	(-) Reliability of data is low; (-) Migration recording is not the key task of reporting.
<b>Main info:</b> Special cyclic observation, migration evaluation data					
<b>Periodicity:</b> Annual					
<b>Record of emigrants with academic degrees.</b>	The State Statistics Service	It covers <b>individuals holding an academic degree and resigning from work at an academic or scientific institution to go abroad</b>	Number of doctors and candidates of science who have gone abroad, their socio-demographic characteristics.	Information is provided by institutions that carry out scientific or educational activity	(+) Data are made available free of charge upon request of budgetary organisations in Ukraine; paid data are provided upon request of other establishments, private persons and foreign nationals.
<b>Main info:</b> primary data; stock and flow data.					
<b>Periodicity:</b> continuous registration					
<b>Records of Ukrainian citizens temporarily working abroad.</b>	The State Employment Service of Ukraine	It covers <b>Ukrainian citizens temporarily working abroad</b> (employed via official intermediaries)	Number of Ukrainian citizens temporarily working abroad, number of individuals employed under the contractor agreement and their socio-demographic characteristics	Information is provided by commercial offices, agencies and other organisations that carry out activities related to the employment of Ukrainian citizens abroad, and Ukrainian enterprises that have concluded contractor an agreement with foreign enterprises	(-) Data refer to a single, not numerous segments of labour migrants
<b>Main info:</b> primary data; flow and stock data.					
<b>Periodicity:</b> continuous registration					

Outward migration: relevant information on sources					
Source	Institutional body in charge of collecting and diffusing data	Population of reference	Migration related variables contained in the source	Data collection methodology	Advantages (+) and drawbacks (-) compared with other sources
<b>Crossing-border statistics.</b>	The State Border Service	It covers <b>persons crossing the state border</b> including visitors.	Number of people leaving Ukraine.	Account is taken of all the individuals crossing the border including individuals caught while attempting to cross the border illegally.	(-) In practice what is registered is not the number of people crossing the border but the number of border crossings – the same person can be registered several times; (-) It includes visitors.
<b>Main info:</b> Primary source; flow data					
<b>Periodicity:</b> Continuous registration (aggregated by year).					
<b>Consular records of Ukrainian citizens abroad.</b>	Diplomatic and consular authorities abroad	It covers <b>Ukrainian citizens registered at consulates</b>	Number of Ukrainian citizens registered at consulates	Information is accumulated at the level of individual diplomatic and consulate authorities	(-) At the national level results are not regularly given.
<b>Main info:</b> primary data, stock and flow data					
<b>Periodicity:</b> continuous registration					
<b>Statistics of the balance of payment.</b>	The National Bank of Ukraine	It covers <b>payment detail options 'Remuneration of labour' and 'Private remittance'</b>	Volumes of private money transfers including remuneration of labour and private remittances, remittances of employees working abroad, financial resources brought in via informal channels	A type of payment detail is indicated by the sender. In accordance with Ukrainian legislation remittances to permanent residents of Ukraine shall be accompanied by payment details.	(+) Complete data on remittances via official channels;  (-) Clearly understates data on informal remittances.
<b>Main info:</b> Mixture of primary data and evaluation collection.					
<b>Periodicity:</b> Quarterly					

Data accessibility: Population Census ( <http://2001.ukrcensus.gov.ua>) – data included in the census data processing programme are available free of charge upon request of Ukrainian budgetary organisations, and as paid service - upon request of other institutions, private persons or foreign nationals; data not included in the census data processing programme can be provided as paid service (the price of such data is relatively high); collections can be bought by anyone, they are also available in an electronic format; current record of changes of the place of residence (<http://www.ukrstat.gov.ua/>) – data are made available free of charge upon request of Ukrainian budgetary organisations, paid data are provided upon request of other establishments, private persons and foreign citizens; records of foreign nationals temporarily working in Ukraine (<http://www.dcz.gov.ua/>) – data are made available free of charge upon request of Ukrainian budgetary organisations, paid data are provided upon request of other establishments, private persons and foreign citizens; records of foreign nationals in Ukraine (<http://www.dmsu.gov.ua>) – available upon request; records of refugees and asylum-seekers (<http://www.dmsu.gov.ua>) – available upon request; crossing-border statistics (<http://www.pvu.gov.ua/>) – available upon request; records of foreign students (<http://www.mon.gov.ua>) – available upon request; the state register of natural persons – tax-payers: available upon request; observation of labour migration issues - only published data are available, access to the primary data base is available for project ordering parties and implementers; statistical record of the development of rural settlement – data are available; Record of emigrants with academic degrees – data are made available free of charge upon request of Ukrainian budgetary organisations, paid data are provided upon request of other establishments, private persons and foreign nationals; records of Ukrainian citizens temporarily working abroad (<http://www.dcz.gov.ua/>) – data are made available free of charge upon request of Ukrainian budgetary organisations, paid data are provided upon request of other establishments, private persons and foreign nationals; consular records of Ukrainian citizens abroad - data can be provided only upon request; and statistics of the balance of payment (<http://www.bank.gov.ua/>) – data are available on the website.



## **CHAPTER 2**

### **Legal Framework on Migration and Asylum**



**Legal Framework of Migration  
Belarus**

**OLEG BAKHUR**

*Legal Module*





In the early 1990s, after the collapse of the Soviet Union, Belarus had to face the problem of migration management and, in particular, of international labour flows. The development of the Belarusian legislation regulating social relations in the field of labour migration took place against the background of significant social, economic and political changes. Belarus became both the host country for labour migrants and their country of origin. It should be noted that the Republic of Belarus had no experience in the field of legal regulation of international labour migration. Therefore, the development of the Belarusian legislation in this area took place, on the one hand, in accordance with international law. On the other hand, Belarusian legislation took over many provisions from the regulations of the former Soviet Union, with all their advantages and flaws.

In the first half of the 1990s laws were passed, which established the basis of the legal regulation of migration. Belarusian legislation however still lacks comprehensive solutions regulating labour migration, integration of migrants and refugees as well as return and reintegration. Its particular feature is also that it tries to extensively regulate entry and exit of its own citizens.

## **General Legal References**

### **Legal framework governing migration and mobility**

2010 Law On the Legal Status of Foreign Nationals and Stateless Persons

2010 Law On External Labour Migration

2010 Law On the Legal Status of Foreign Nationals and Stateless Persons

2009 Law On the Procedure of Entry and Exit for the Citizens of the Republic of Belarus

2008 Law On Refugee Status, Subsidiary and Temporary Protection to Foreign Nationals and Stateless Persons

2008 Law on the Population Registration

2006 Law On the Legal Status of Foreign Nationals and Stateless Persons in the Republic of Belarus

2002 Law On Citizenship of the Republic of Belarus 1994 Constitution

## **Regional Agreements**

Belarus is a party to the following regional agreements:

- 1994 Agreement on cooperation in the field of labour migration and social protection for migrant workers
- 1998 Agreement on cooperation between CIS Member States in combating illegal migration (entered into force in Belarus in 1999)
- 2008 Convention on the legal status of migrant workers and their families, adopted by CIS Member States
- 2010 EurAsEC Agreement on the Legal Status of Migrant Workers and the Members of their Families
- 2010 EurAsEC Cooperation Agreement on Countering Illegal Labour Migration from Third Countries (entry into force on 1 January 2012)

The legal basis for prevention and countering of human trafficking in the Republic of Belarus is ensured by:

1. The Law of the Republic of Belarus of 07.01.2012 № 350-3 “*On Combating Human Trafficking*”;
2. A decree by the President of the Republic of Belarus of 02.10.2010 № 518 “*On the State Program on the countering human trafficking, irregular migration and related unlawful acts for 2011-2013*”;
3. A decree by the Ministry of Public Health of the Republic of Belarus of 28.04.2012 № 41 “*On establishing a list of required medical services provided by state health service agencies, including in-patient departments, to the victims of human trafficking irrespective of the place of their permanent residence*”;
4. The Criminal Code of the Republic of Belarus (arts. 181, 181-1, 182, 183).
5. The Code of Administrative Offenses

### **Belarus ratified Palermo Protocols in 2003.**

The peculiarity of international agreements of the Republic of Belarus related to migration is that the greatest progress in developing bilateral agreements has been achieved only in agreements with the countries of the Commonwealth of Independent States (hereinafter – CIS or Commonwealth) on the whole and within the Eurasian Economic Community (Common Economic Space) in particular.

### **Bilateral Agreements**

The key bilateral agreements related to **free movement of persons** is the Agreement between the Republic of Belarus and the Russian Federation on ensuring equal rights of the citizens of the Republic of Belarus and of the Russian Federation to the freedom of movement, free choice of the place of stay and residence on the territories of the member states of the Union State (concluded in Saint-Petersburg on 24.01.2006). Other CIS agreements on labour migration concluded by Belarus mostly duplicate, complement and specify the articles of the Agreement on Cooperation in the Field of Labour Migration and Social Protection for Migrant Workers (concluded in Moscow on 15.04.1994, the version of 25.11.2005).

In case there are no bilateral agreements between the Republic of Belarus and a particular CIS state related to the exchange of labour force, the countries apply the aforementioned Agreement of 1994, as well as the 2008 CIS Convention on the legal status of migrant workers and members of their families, coming from the CIS participating states, which apart from Belarus has been ratified by Armenia, Azerbaijan and Ukraine.

### **International Protection**

The legislation of the Republic of Belarus envisages granting people, persecuted in other states for their political or religious beliefs, ethnic origin, etc.:

1. refugee status;
2. asylum.

According to the Decree of the President № 204 a right to asylum is the right of a foreigner, persecuted in any other state for his/her political or religious beliefs or ethnic origin, to stay on the territory of the Republic of Belarus (point 2). Asylum is granted by the President of the Republic of Belarus.

Foreigners who have been granted Asylum in Belarus enjoy the rights and freedoms, as well as the duties, equal to those of foreigners permanently residing in Belarus. Asylum also extends to family members, who have arrived together with the foreigner who has been granted asylum.

Law № 354-3 “*On Granting Foreign Nationals and Stateless Persons in the Republic of Belarus with Refugee Status, Subsidiary and Temporary Protection*” defines three categories of foreigners as according to their legal status:

1. Foreigners who have been granted refugee status;
2. Foreigners who have been granted subsidiary protection (up to 1 year);
3. Foreigners who have been granted temporary protection (group protection up to 1 year).

Article 47 (“Family reunification”) of Law № 354-3 states that members of the family of a foreigner who have been granted refugee status or additional protection, are also granted refugee status or additional protection in accordance with the principle of family unity.

The application distribution system is based on annually established quotas. These quotas define the number of applications for granting protection which can be filed in each of the six regions of the Republic of Belarus within a calendar year. In case of the exhaustion of the above-mentioned regional quotas, applications can still be filed in Minsk.

Refugees obtain special benefits and their socio-economic rights are equal to those of the citizens of the Republic of Belarus: for example, refugees are eligible to free access to national education and health care systems, refugees’ children can attend the institutions of pre-school education, etc.

## **Outward migration**

### **Entry and Exit**

#### **Visa**

Citizens of Belarus are exempt from short-term visa requirements in the CIS countries, Georgia, Montenegro, Serbia, China (tourist group travels), Cuba, Bolivia and Venezuela.

Belarusian citizens enjoy freedom of movement within the Union State of Russia and Belarus, as well as within the Common Economic Space of the Eurasian Economic Community, with the Russian Federation and Kazakhstan.

#### **Cross-border mobility**

Local Border Traffic agreements have been signed with Latvia, Lithuania and Poland for visa-free travel of residents of border territories by obtaining a Local Border Traffic permits. National legislation related to the right of citizens to exit and enter the Republic of Belarus is based on the following principles (art. 3 of the Law № 49-3 on the rules of entry and exit of the Belarusian citizens):

1. every citizen has a right to exit the Republic of Belarus and enter the Republic of Belarus;
2. citizens cannot be denied the right to enter the Republic of Belarus and exit it;
3. the right to enter the Republic of Belarus can not be restricted.

However, according to art. 3 of the Law № 49-3 the right of a citizen to exit the Republic of Belarus can temporarily be restricted. Article 7 of the Law № 49-3 contains a comprehensive list of reasons to temporarily restrict citizens’ right to exit the country.

Law № 49-3 (art. 23) establishes that citizens, whose right to exit the Republic of Belarus is temporarily restricted, have the right to appeal against the actions (or failure to act) of the state authorities to the superior state authority (superior official) and/or court.

## **Irregular Migration**

Belarus has no readmission agreements in place.

At the legal level, the issues of readmission in the Republic of Belarus are currently poorly developed due to difficulties in concluding such bilateral agreements. The only relevant regulation pertaining to this issue is the decree by the Council of Ministers of the Republic of Belarus of 31.12.2010 № 1918 *“On the Approval of the Regulations on the procedure of handing over to neighbouring states foreign nationals and stateless persons, who have violated the rules of local border traffic, set up by international agreements of the Republic of Belarus or who have lost the documents, according to which they had entered the territory of the republic of Belarus.”*

## **Rights and Settlement**

The issues of emigration from the Republic of Belarus are addressed in chapter 4 of Law № 49-3 *on the rules of entry and exit of the Belarusian citizens*. Permanent residence of Belarusian citizens abroad is formally established by issuing a passport of the citizen of the Republic of Belarus for permanent residence abroad and by registering them at Belarusian consulates.

Art 20 of Law № 49-3 lists the responsibilities of citizens declaring their will to emigrate permanently before they are issued the above-mentioned passport.

Citizens who have received the passport are required to register at a consulate or diplomatic mission of the Republic of Belarus in the country of permanent residence (art. 21 of

Law № 49-3). Based on the data provided by the consular register of the citizens permanently residing abroad, the Ministry of Foreign Affairs of Belarus upkeeps the relevant database.

## **Labour**

Bilateral agreements on labour migration have been concluded with six CIS countries (AM, AZ, KZ, MD, RF, UA) and Lithuania, Poland, Serbia. CIS Convention on the legal status of migrant workers and members of their families, coming from the CIS participating states (2008) and Agreement on Cooperation in the Field of Labour Migration and Social Protection for Migrant Workers (1994) apply vis-à-vis certain CIS states.

2010 EurAsEC Agreement on the Legal Status of Migrant Workers and the Members of their Families with RF and KZ allows BY citizens to work in these countries without work permits. Law № 225-3 envisages a number of measures to ensure the rights of Belarusian migrant workers abroad. A contract is required for people who plan to work abroad. Activities of private firms engaged in employment abroad are now licensed, precisely regulated by law and put under control of relevant state institutions. Liability for abuses in this field has likewise been established. The powers of state institutions have been defined, including of those responsible for supervision of migrants' contracts with employers. It has also been established that such contracts should include conditions of paying wages, residence, overtime work, social security in case of illness, etc.<sup>1</sup>

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<sup>1</sup> See for detailed analysis of the legal aspects of labour migration governance in Belarus: Oleg Bakhur, Legal aspects of labor migration management in the Republic of Belarus, CARIM-East Research Report 2013/19, <http://www.carim-east.eu/media/CARIM-East-RR-2013-19.pdf>

## Citizenship

Simplified procedure for granting citizenship is established for Belarusians. For example, as required by the general rules, 7 year residence term can be shortened or omitted for ethnic Belarusians or people identifying themselves as Belarusians, as well as their descendants born outside the territory of the present day Belarus (art. 14 of the Law 136-3 “*On the Citizenship of the Republic of Belarus*”).

In accordance with article 17 of Law 136-3 the citizenship of the Republic of Belarus ceases in case of: 1) renunciation of the citizenship of the Republic of Belarus; 2) loss of the citizenship of the Republic of Belarus.

A citizen of the Republic of Belarus upon reaching the age of 18 is eligible to apply for renunciation of the citizenship of the Republic of Belarus (art. 18 of the Law № 136-3).

The citizenship of the Republic of Belarus is lost (art. 19 of the Law № 136-3) in case:

1. the person enters military service, police service, national security agencies, justices or other national agencies of a foreign state;
2. parents (single parent) submit application on behalf of their child, who along with the citizenship of a foreign state also acquired the citizenship of the Republic of Belarus.

The decision on cessation of the citizenship of the Republic of Belarus is cancelled if it has been made on the basis of deliberately misleading data or counterfeit documents. The decision on cessation of the citizenship of the Republic of Belarus is made by the President of the Republic of Belarus according to procedure established by him.

## Inward migration

### Visa

Belarus applies 3 types of visa:

- “B” - transit visa for max 2 days;
- “C” – short term visa for max 90 days stay;
- “D” – long-term visa for a stay of max 90 days during one year, unless stated otherwise in an international agreement.

Citizens of CIS countries, Georgia, Serbia, Montenegro, China (tourist group travel), Bolivia, Cuba and Venezuela are exempted from the short term visa requirement.

## Cross-border mobility

In accordance with the *Law № 105-3 on legal status of foreign nationals*, those foreigners who have no valid residence permit can enter the Republic of Belarus, exit it or carry out transit travel through the territory of the Republic of Belarus only with valid travel documents and with a visa.

Foreigners applying for visa or entry to the Republic of Belarus are required to have enough funds to cover their expenses during their stay in Belarus and to timely leave the country.

Foreigners can only exit the Republic of Belarus if they have visas. A foreigner can temporarily be restricted in his right to leave the Republic of Belarus. Comprehensive list of grounds for such a refusal can be found in art. 33 of the Law № 105-3.

Law № 105-3 envisages mandatory non-judicial procedure for foreigners to file an appeal against decisions or actions (including failure to act) of state authorities and officials of the Republic of Belarus related to the execution of Law № 105-3.

## Irregular Migration

The legal basis for preventing irregular migration to the Republic of Belarus is provided by:

- a. The Decree by the President of the Republic of Belarus of 2 October 2010 № 518 “On the State program for the prevention of human trafficking, irregular migration and related unlawful acts for 2011-2013”;
- b. Administrative Code of the Republic of Belarus of 21 April 2003. № 194-3 (arts. 23, 29, 23.55);
- c. Criminal Code of the Republic of Belarus of 9 July 1999. № 275-3 (art. 371, 371-1, 371-2).

Article 23.29 of the Administrative Code (AC) envisages responsibility for trespassing the State Border of the Republic of Belarus (i.e. at unauthorized points, using counterfeit documents, etc.) The sanction by article 23.29 envisages expulsion of the offender.

The remark in article 23.29 indicates, however, that this article does not cover the instances of violating the rules of crossing the State Border of the Republic of Belarus by foreign nationals and stateless persons applying for refugee status, asylum or other kind of protection on the territory of the country.

Belarusian legislation also envisages employer’s sanctions for employing irregular migrants (including illegal employment) (section 2 art. 23.55 of AC). Art.371-1 of the Criminal Code that defines criminal responsibility for organizing irregular migration (smuggling activities).

Art. 371-2 of the Criminal Code establishes responsibility for violating terms of entry ban to the Republic of Belarus in case a foreigner, who had been previously expelled or removed from the country, entered Belarus before the expiration of expulsion term and is staying on its territory

## Rights and Settlement

Upon their arrival to Belarus, foreigners are required to register within 5 days with a nearest registering authority (30 days for the citizens of the Russian Federation, Kazakhstan, the Republics of Latvia, Lithuania, and Ukraine).

**Permits for temporary stay** are granted to foreigners coming for a period shorter than one year (art. 43, Law № 105-3 *on legal status of foreign nationals*). Family members of a temporary resident can likewise apply for similar permits if they authenticate the sources of lawful income.

**Permanent residence permit** is granted to foreigners who:

1. are close relatives of the citizens of the Republic of Belarus permanently residing in the country;
2. have been granted refugee status or asylum;
3. have a right to family reunification;
4. have been legally residing in Belarus for past seven or more years;
5. are eligible to obtain Belarusian citizenship;
6. previously had the citizenship of the Republic of Belarus;
7. have sought for skills;
8. have abilities and talents or have performed outstanding services to the Republic of Belarus;

9. have invested in Belarus no less than 150,000 Euros;
10. are ethnic Belarusians or their direct descendants: children, grandchildren, great grandchildren, born outside the current territory of the Republic of Belarus.

Foreigners on the territory of Belarus are equal before the law as the citizens of the Republic of Belarus (chapter 2 of the Law № 105-3). *Law № 105-3 on the legal status of foreign nationals and stateless persons* defines the scope of the rights and duties according to the category. In accordance with the Law foreign nationals have the right to freely move and to choose the place of stay (residence). At the same time *temporarily staying and residing* foreigners are obliged to reside only at the address of registration (or for which a permit for temporary residence has been issued).

Foreign nationals cannot become members of political parties or other associations pursuing political goals (art. 9, Law № 105-3).

Permanent residents enjoy all the socio-economic rights (art. 10, Law № 105-3). Temporary residents are granted the right to legally participate in the state social security system programs with mandatory contributions by employers.

All foreigners in the Republic of Belarus are obliged to reimburse the costs spent by the Republic of Belarus for the upkeep of their children in public care (art. 24 of the Law № 105-3). There are exceptions from the general legislation defining the status of foreign nationals related to the citizens of CIS countries. These exceptions are established by agreements between CIS member states.

## Labour<sup>2</sup>

Russian and Kazakh citizens enjoy a free access to the Belarusian labour market, with the same right as Belarusian citizens.

The principle normative legal act related **to labour migration** is the Law № 225-3 “*On External Labour Migration*.” It regulates employment of foreigners in the Republic of Belarus, as well as overseas employment according to labour contracts of citizens and foreigners permanently residing in Belarus.

Foreigners permanently residing in the country have the right to engage in labour or entrepreneurial activities equal to that of the citizens of the Republic of Belarus and according to the procedure established by law.

Temporary residents do not have the right to carry out entrepreneurial activities without forming a legal entity, unless otherwise specified by law and international agreement of the Republic of Belarus. The procedure of recruitment of foreign labour is regulated by the decree of the Council of Ministers of Belarus № 885.

Activities related to attracting foreign labour force to Belarus is not licensed. If an employer intends to bring in and employ 10 or more migrants, an authorization issued by the Department for citizenship and migration of the Ministry of Internal Affairs is needed.

The legislation of the Republic of Belarus establishes a comprehensive list of the reasons to refuse or cancel employers’ authorizations or special licenses to labour immigrants. Moreover the legislation defines the state guarantees to labour immigrants carrying out their labour activities in the Republic of Belarus (art. 33 of the Law № 225-3). Recently, the Council of Ministers of the Republic of Belarus proposed to establish quotas for labour migrants.

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<sup>2</sup> See for detailed analysis of the legal aspects of labour migration governance in Belarus: Oleg Bakhur, Legal aspects of labor migration management in the Republic of Belarus, CARIM-East Research Report 2013/19, <http://www.carim-east.eu/media/CARIM-East-RR-2013-19.pdf>

## Citizenship

The principal normative legal act related to citizenship is the Law of the Republic of Belarus of 2002 № 136-3 “*On the citizenship of the Republic of Belarus.*” Citizenship in the Republic of Belarus can be obtained:

1. by birth (art. 13 of Law № 136-3) to Belarusian citizens or stateless persons, or
2. by acquisition (art. 14 of Law №136-3). This procedure is open to any permanent resident, after 7 years of residence, who can prove links with the country, including knowledge of one of the official languages, has the source of lawful income and has no citizenship or loses the previous citizenship upon acquisition of the Belarusian citizenship;
3. by registration (art. 15 of the Law №136-3). This procedure is open to any permanent resident with a citizenship of the former USSR and no Belarusian citizenship;
4. in line with international agreements on simplified acquisition that Belarus concluded with several countries.

Simplified procedure for granting citizenship is established for certain categories of persons (art. 14 of Law 136-3).

The decision on acquisition of the citizenship of the Republic of Belarus is cancelled if it has been made on the basis of deliberately misleading data or counterfeit documents. The decision on acquisition of the citizenship of the Republic of Belarus is made by the President of the Republic of Belarus according to procedure established by him.



**Legal Framework of Migration  
Moldova**

**TATIANA CIUMAS**

*Legal Module*



Moldovan migration policy is reflected in National Strategies, programs and plans and in the domestic legislation of the Republic of Moldova (RM). The current legislative framework regulates the immigration of foreigners and strictly divides competences between responsible bodies and favours stronger relations with Moldovan citizens residing abroad; providing services for returning migrants; and stimulating conditions to prevent the emigration of citizens. In September 2011, the National Strategy in the migration and asylum domain (2011-2020) was approved. This provided the basis for a comprehensive regulation of migration and asylum management, the harmonization of the national legal framework with international and EU law, and the regulation of migration flows. The Moldovan strategy is intended to contribute towards socio-economic development, state security and towards the achievement of European integration goals. In December 2011, the Action Plan for 2011-2015, regarding the implementation of the Strategy, was approved. The activities included a Plan describing how the state intends to improve migration management. The cooperation with the CIS countries is maintained within the framework of regional and bilateral agreements.

The Moldova-EU Action Plan includes strategic objectives in the migration domain. Based on this document, Moldova adopted National Programs, where the European vector has become a must when implementing policies for the public authorities.

### **General Legal References**

- 2013 Government Decision for the approval of Additional Measures to the National Program for the implementation of the Moldova –EU Action Plan in the field of visa liberalization regime
- 2013 Government Decision for the approval of the Regulation regarding issuance of visas
- 2013 Government Decision for the approval of the Regulation on issuing identity documents and evidence of the residents of the Republic of Moldova (second generation of identity documents)
- 2013 Government Decision on the approval of the Regulation regarding issuance of visas
- 2011 Law on the Integration of Foreigners in the Republic of Moldova
- 2011 Law on the state border of the Republic of Moldova
- 2011 Law on the border police
- 2011 National Strategy in the Domain of Migration and Asylum (2011-2020)
- 2011 National Action Plan for the Implementation of the National Strategy in the Domain of Migration and Asylum (2011-2015)
- 2010 Government Decision regarding the Commission for the Coordination of Certain Activities Relating to Migration
- 2010 Law on the Regime of Foreigners in the Republic of Moldova
- 2008 Law on Labour Migration
- 2008 Law on Asylum in the Republic of Moldova
- 1994 Law on the Legal Status of Foreign Citizens and Stateless Persons
- 1994 Law on exit from and entry into the Republic of Moldova
- 1994 Constitution of the Republic of Moldova

**Moldova is a party to the following multilateral agreements within the framework of the CIS:**

- Convention on the legal status of migrant workers and their families, adopted by CIS Member States 14 November 2008;
- Agreement on cooperation within the field of labour migration and social protection for migrant workers, 15 April 1994;
- Protocol on amendments to the Agreement on cooperation within the field of labour migration and social protection for migrant workers, 25 November 2005

In 2011 Moldova approved the Agreement regarding collaboration between ministries of internal affairs of the CIS countries in their fight against human trafficking, signed in Saint Petersburg, 17 September 2010.

**Human Trafficking**

Moldova ratified the Palermo Protocols in 2005, with a reservation regarding the territorial applicability of the Protocol (excluding Transnistria).

Relevant legal acts relating to the prevention of and combating human trafficking are:

1. Law no. 241 of 20 October 2005 on the prevention and combating of human trafficking.
2. Penal Code of 18 April 2002 sets the following actions as crimes: human trafficking (Article 165), slavery and conditions similar to slavery (Article 167), forced labour (Article 168), perverse actions (Article 175), approaching children for sexual purposes (Article 175<sup>1</sup>), trafficking in children (Article 206), the illegal removal of children from the country (Article 207), involving minors in criminal activity or making them commit immoral acts (Article 208), child pornography (Article 208<sup>1</sup>), use of child prostitution (Article 208<sup>2</sup>), pandering (Article 220), organization of illegal migration (Article 362<sup>1</sup>).
3. Regulation on the repatriation procedure for children and adults, victims of human trafficking, illegal trafficking in migrants, as well as unaccompanied children, approved through Government Decision no. 948 of 7 August 2008.
4. Law no. 105 of 16 May 2008 on the protection of witnesses and other participants in the penal process.
5. The law on the regime of foreigners was amended in December 2012 granting an extension of temporary residence rights for victims of human trafficking for a period of 6 months with the possibility of extension: all this was granted free of charge (Article 42<sup>1</sup>).
6. Regulation-framework for the organization and functioning of the centres for the assistance and protection of victims of human trafficking, approved through Government Decision no. 1362 of 29 November 2006.

**International Protection**

Moldovan legislation in refugee protection is largely in line with international standards. The law on asylum in the Republic of Moldova of 2008 replaced the former law on the status of refugees, partially transposing European legislation on asylum.

In 2002, Moldova ratified The United Nations Convention Relating to the Status of Refugees. The UN High Commissioner for Refugees has a national office in Moldova.

Forms of protection granted in Moldova are:

- – refugee status: in compliance with Geneva Convention;
- – humanitarian protection;
- – temporary protection, which has never been applied;
- – and political asylum, granted by the President.

**The Law on Asylum** differentiates between the status of refugees and the status of beneficiaries of humanitarian protection. For a recognized refugee, holding an ID valid for five years there is no restriction on movement within those five years. In the case of a beneficiary of humanitarian protection, his/her situation is limited to ID validity for one year. The rights of asylum seekers are set in Article 28-31 of the Law, and the rights of refugees and beneficiaries of humanitarian protection in Article 33, 35-38. The beneficiaries of political asylum have the same rights and duties as the refugees.

## Outward migration

### Entry and Exit

#### Visa

The Republic of Moldova is a party to the 1992 Agreement on Visa-free Movement of Citizens of the CIS Countries on the Territory of the Member States, according to which the citizens of the RM are exempted from the visa requirements for CIS countries (except Turkmenistan) and Georgia.

In 2007, Moldova signed a Visa Facilitation Agreement with the EU (amended in 2012). The Agreement facilitates the issuance of visas to the citizens of the Republic of Moldova for a stay of no more than 90 days per 180 days.

#### Cross-border mobility

According to Art. 1 of the **Law on Exit and Entry** to the Republic of Moldova, citizens of the RM have the right to exit and enter the Republic of Moldova with their passports. Art. 8 of the law sets out the conditions when issuance or extension of a new passport or travel document is refused: this mainly involves issues of national security and public order.

Since May 2012, citizens of the RM, regardless of their domicile or residence or legal status abroad, have the right to enter the country based on a travel authorization issued by diplomatic missions or consular posts.

The Regulation allows travel authorization in cases of justified emergencies.

Though legislation proclaims freedom of movement, the **Law on Labour Migration** of 10 July 2008 sets **restrictions** for the emigration of citizens abroad in Art. 23 referring to:

- a court decision in a criminal case;
- a court decision regarding debtors;
- a document regarding the established guardianship over the minors who remain within the country.

## Irregular Migration

In 2007, the **Agreement** between the EU and the Republic of Moldova on the readmission of persons residing without authorization was signed (it entered into force 1 January 2008). Under Article 19 of the 2007 Agreement, Moldova signed implementation protocols with the Czech Republic, Estonia, Lithuania, Poland, Romania, Hungary, Slovakia, Germany, Austria, Latvia, Bulgaria, Malta and Benelux. With Italy and Norway agreements were signed, respectively 3 July 2002 and 31<sup>st</sup> May 2005.

Moldova also signed the Agreement and implementation protocol with Switzerland and with Denmark following the joint declaration under the Agreement of 2007.

Apart from the EU, **readmission agreements are in place** with Bosnia and Herzegovina, Macedonia, Montenegro, Albania, Serbia, Turkey and Ukraine.

The agreement on **cooperation between CIS Member States in combating illegal migration**, 6 March 1998, regulates cooperation between Moldova and other countries within the CIS. Moldova must, in terms of the agreement, develop instruments curbing the irregular migration of its own nationals, in accordance with international law.

At present Moldova is negotiating an agreement with the Russian Federation and main countries of origin of migrants.

## Rights and Settlement

Article 27.2 of the Constitution stipulates that citizens of Moldova enjoy the protection of their State both at home and abroad, as well as the right to exit, to emigrate and to return to the country.

## Labour

The Law on Labour migration, 10 July 2008, regulates the conditions for the temporary employment of RM citizens abroad. The Law defines emigrant workers as citizens of the Republic of Moldova, with permanent domicile on its territory: these voluntarily left the country to go to another country in order to perform a temporary labour activity.

There are five criteria set in legislation for examining emigration cases: Moldovan citizenship, permanent domicile in Moldova, voluntary departure from the country, a state of destination different from Moldova and performance of a temporary labour activity. The Law also defines 2 categories of workers: the seasonal worker, namely, a citizen of the Republic of Moldova employed within the territory of another state with an individual employment contract for a determined period of time or for determined work performed within a certain period of the calendar year; and a border worker, namely, a citizen of the border zone of the state who returns at least once *per* week to the Republic of Moldova where he/she is a citizen.

The Law provides for the following forms of temporary employment abroad for Moldovan nationals:

1. employment based on an individual employment contract concluded with the employer before exiting the country;
2. through private employment agencies, which have licenses;
3. according to the provisions of bilateral agreements.

The licensing of private recruitment agencies is provided for in Law no. 180 and Law no. 451 regarding the licensing of business activity, 30 July 2001. In order to protect the citizens who work abroad, the Law on labour migration was modified in 2013 with a special focus on the regulation of private work agencies.

On 5 July 2011, the Government of Moldova signed an **Agreement on Labour Migration** and an **Implementation Protocol** thereof with the Government of **Italy**. With this agreement the Italian Government grants the RM citizens a special entry quota. The Agreement specifies that a quarter of this quota will be managed by the relevant Moldovan Ministry. The agreement provides for: the development of circular migration schemes for Moldovan workers, joint projects for technical assistance, the implementation of common initiatives for Moldovans staying in Italy, the organization of vocational training and Italian language courses, offered by Italian institutions in Moldova.

16 October 2012 an Agreement on temporary employment of workers from the Republic of Moldova in certain sectors from the State of Israel was signed. The agreements signed previously with Belarus, Ukraine and Azerbaijan are still in force.

The draft agreement with the Russian Federation on cooperation in the labor migration domain and temporary labor activities of migrant workers on the territory of the Republic of Moldova and the Russian Federation was completed for signing.

Moreover, the Republic of Moldova has concluded agreements in the field of social security / protection with Austria, Azerbaijan, Belarus, Belgium, Czech Republic, Bulgaria, Estonia,

Luxembourg, Romania, Portugal, the Russian Federation, Ukraine and Uzbekistan.

## Citizenship

According to the **Constitution** (Art. 17), the citizenship of the Republic of Moldova can be acquired, retained or lost only under the conditions provided for by the basic law, and no one may be deprived arbitrarily of his or her citizenship or the right to change it.

Citizens of the Republic of Moldova shall enjoy the protection of their State both at home and abroad.

Until 2002, the Constitution contained, in Article 18, restrictions regarding possession of non-Moldovan citizenship.

In 2002, by the Law No. 1469 of 21 November 2002, this Article was modified. Art. 24 of the Law On Citizenship authorizes the plurality of citizenship.

According to the **Law on Citizenship**, citizens of the Republic of Moldova, who reside lawfully and habitually in the territory of the Republic of Moldova and are in legal possession of the citizenship of another state, shall enjoy the same rights and duties as other citizens of the Republic of Moldova (Art. 25).

An RM citizen who is in legal possession of the citizenship of another state shall be subject to military service by the Republic of Moldova, if that person resides lawfully and habitually in its territory: this is irrespective of exemption from military service in the other state (Article 26). RM citizens who are, at the same time, the citizens of other states are recognized in relation to the RM as its citizens alone.

## Inward migration

### Visa

Citizens of Canada, the CIS (except Turkmenistan with some exceptions), Georgia, EEA, the Holy See, Israel, Japan, the Principality of Monaco, the Principality of Andorra and the USA are exempted from any visa requirement for a period of stay lasting up until 90 days, during six months from the moment of

the first entry. Under Art. 6(5) of the Law on the Regime for Foreigners, foreign nationals who reside in the Republic of Moldova legally and temporarily and who leave its territory are entitled to re-enter the country without an entry/exit visa during the whole validity period of their residence permit.

4 types of visa are granted:

“A” Type – airport transit visa;

“B” Type – transit visa;

“C” Type – short-term visa for the period of up to 90 days during 6 months;

“D” Type – long-term visa for a period not exceeding 12 months.

The Regulation regarding issuance of visas which partially transposed the EU Visa Code entered into force 1 April 2013.

### **Cross-border mobility**

Foreigners can enter Moldova through state border crossing points with a valid passport, an entry visa or a document attesting residence status. Foreign citizens, holders of a valid permanent residence permit are exempted from the visa requirement.

According to Art. 1 of the national Law on Exit and Entry, stateless persons, refugees and beneficiaries of humanitarian protection have the right to exit and enter the RM based on their travel documents. Stateless persons and foreign citizens with permanent or temporary resident rights in the Republic of Moldova, who are abroad and who have no valid travel documents for returning to the Republic of Moldova, have the right to enter based on a travel authorization issued by the diplomatic missions or consular posts of the Republic of Moldova. A foreigner may be prohibited from exiting in the case of criminal charges or a court sentence.

### **Irregular Migration**

The *Law on the Regime of Foreigners in the Republic of Moldova*, 16 July 2010 partially transposed the European legislation, including the Directive 2008/115/CE (*Return Directive*).

8 November 2013 new modifications to the Contravention Code of the Republic of Moldova regarding sanctions for violating the residence rules by foreigners entered into force. Thus article 333 sets the situations considered to be violations and the respective sanctions, namely:

- Violation of residence rules in the Republic of Moldova by not leaving voluntarily the territory upon expiry of the granted staying or residence period;
- Violation of the residence rules in the Republic of Moldova through the use of false documents, though declaration of false data with a view to obtaining visa or identity documents;
- Failure to submit timely the application for granting/prolonging the residence right at the Bureau of Migration and Asylum;
- Failure to declare, within the time prescribed by the legislation, entrance to the territory of the Republic of Moldova for record, to the Bureau of Migration and Asylum. An exception is made of those whose entrance was authorized. It should be noted that this sanction shall not be applied in case of the holders of travel documents issued by foreign authorities domiciled in Transnistria (left bank of Dniester River).

The Regulation on return, expulsion and readmission procedures of foreigners from the territory of the Republic of Moldova establishes return, expulsion, and readmission procedures. The return measure applies to foreign nationals: 1) who entered the territory of the Republic of Moldova illegally;



2) whose stay became illegal; 3) whose visa/residence right was cancelled or revoked; 4) who were denied the extension of a temporary residence right; 5) whose permanent residence right has ceased; 6) whose application for recognition of stateless status was rejected, whose procedure ceased or whose stateless status was cancelled; 7) who are former asylum seekers or whose refugee status or humanitarian protection was cancelled.

**Return** (forced) decision is taken by the Bureau of Migration and Asylum in relation to a foreign national who entered illegally or who lost the right to stay (including rejected asylum seekers). Foreign nationals have the obligation of **independent departure** (from 5 days to 3 months depending upon the category of persons), non-compliance leads to **removal**. The right to appeal within 5 days (no suspensory effect) is granted. The suspensory effect of the application for international protection has a suspensory effect upon the execution of the return decision. An entry ban can be imposed of one to five years.

**Removal** under escort, i.e. when the personnel of the BMA accompany a foreigner to the State Border. From 8 November 2013 removal under the escort applies to those foreigners who did not leave the territory within the granted period of time voluntarily; crossed or tried to cross illegally the state border or whose identity could not be established; who entered into the Republic of Moldova within the ban period previously disposed; who have been declared persona non grata (i.e. pose a risk to national security and public order); against whom the expulsion was ordered. .

Removal is implemented within 24 hours if no further formalities are needed. Otherwise, foreigners are placed into **public custody** (detention at the Centre for Temporary Placement of Foreigners, ordered by a court) for 30 days (can be extended by a court for up to 6 months) or starting with November 2013 tolerated stay is granted.

The decision on removal can be appealed but with no suspensory effect. In cases of expulsion the **entry ban** according to the Law on the regime of foreigners is set at 5 years.

8 November 2013 the new article 334<sup>1</sup> of the Contravention Code (modified through the Law no. 232 of 11 October 2013) entered into force. This article sanctioned the violation of staying rules in public custody. The violation refers to unauthorized leave by the foreign national or stateless person of the Centre for Temporary Placement of Foreigners during the public custody period or during escort to/from the Center.

Additionally Law no. 232 introduced a new article which refers to placing minors and families into public custody. The new provisions emphasize the best interest of the child, the right of children to education and protection of family life.

Another form of forced return is **Expulsion**, i.e. removal as an additional measure ordered by a court in relation to foreigners who have committed criminal or administrative offences. Foreigners are taken into **public custody** by a court decision (the same rules as mentioned above), and an **entry ban** of 5 years or 10 years is imposed if foreigners pose a serious danger to the public order or national security. **Tolerated status** is granted if the expulsion is impossible.

## Rights and Settlement

According to Article 19 para.1 of the Constitution and Article 5 of the 1994 **Law on Legal Status of Foreign Citizens and Stateless Persons**, foreign citizens and stateless persons have the same rights and duties as the citizens of the Republic of Moldova. Note though that there are exceptions established by the law, for the most part relating to political rights.

**Law on the Regime for Foreigners in the Republic of Moldova** (in force since December 2010) regulates: foreigners' entry into, stay on and departure from the territory of the RM; the granting and extension of the residence right, the repatriation and documentation thereof; and enforcement

measures in case of violation of the residence regime and immigration registration measures. Holders of temporary/permanent resident rights cannot be subject to any restrictions regarding their freedom of movement while their permit is valid.

The right to **temporary residence** is granted up to five years.

The right to **permanent residence** can be granted, as a rule, after five years of temporary residence.

The Law on the integration of foreigners in the Republic of Moldova was adopted 27 December 2011 and entered into force only 1 July 2012. The Law establishes the categories of foreigners who have access to integration activities namely holders of permanent resident right and temporary residence right (family reunification, work purpose, studies, humanitarian or religious activities); recognized stateless persons in the Republic of Moldova; and beneficiaries of protection (refugee status, humanitarian protection, political asylum) .

Integration activities granted under the Law are: socio-cultural accommodation sessions, state language courses, information/counseling/guidance/professional training for entering the labour market, and integration programs for beneficiaries of a form of protection.

The Law on integration sets out that these foreigners have access to: the preschool, primary and secondary general education; the public system of social insurance; and to the national system of social assistance. Access is given with the same conditions established by the law as for citizens of the Republic of Moldova.

As for the access to medical services, since 1 July 2013 matters have changed. Holders of permanent resident right and temporary residence right (family reunification, work purpose, studies, humanitarian or religious activities), beneficiaries of protection, employed based on an individual work contracts now have the same rights and duties in terms of compulsory health insurance as Moldovan nationals. This is in accordance with the legislation in force, if international treaties do not provide otherwise. Foreign citizens and stateless persons to whom a temporary residence right for family reunification, studies, humanitarian or religious activities was granted on the territory of the Republic of Moldova are obliged to insure themselves individually. They must pay a compulsory health insurance fee similar to that paid by Moldovan citizens who pay a fixed insurance fee; at least if international treaties do not state otherwise. Beneficiaries of protection, when entering integration programs, receive health insurance from the state free of charge during the program.

## Labour

From 2008 onwards, labour migration has been regulated by a *special Law on labour migration*. This law sets out how the responsibilities for regulating labour migration are divided between the Bureau of Migration and Asylum under the Ministry of Interior and the National Agency of Employment (Law No. 691 of 27 August 1991) under the Ministry of Labour, Social Protection and Family. There is a strict distinction between the right to work and the right to stay for the purpose of work.

Labour immigration is possible only when the vacancies cannot be filled from domestic human resources.

The right to work is conferred by the decision of the National Employment Agency, based on which the Bureau of Migration and Asylum grants a temporary residence right for the purpose of work and issues a temporary residence permit. Foreigners holding permanent resident permits or temporary residence right for family reunification have been excluded from the provision: this was done by the law on labour migration, 29 March 2013.

Students can perform a labour activity on the territory of the country of not more than 10 hours per week or the equivalent in days in one year (Article 5 para. (4) of the Law on labour migration).

Moldova introduced a new category of residence beneficiaries right in 2013, namely foreign investors. Thus according to Article 36 of the law on the regime of foreigners the temporary residence right for foreign investors is granted to foreigners to make investments in the Republic of Moldova. It is mentioned in Article 8 para. (4), which sets the amount of said investments, which was modified in 2013.

## Citizenship

Under Article 88 of the **Constitution**, the President of the Republic of Moldova is empowered to solve issues relating to citizenship.

**Law on Citizenship** (entry into force: 10 August 2000) stipulates that foreigners can acquire RM citizenship by: birth (Article 11), adoption (Article 13) or naturalization (Article 17). Citizenship of the Republic of Moldova may also be acquired on the basis of international agreements to which the Republic of Moldova is a party (Article 10.2).

Citizenship may be lost by renunciation, deprivation or on grounds deriving from international agreements to which the Republic of Moldova is a Party (Article 21).

Chapter VI of the Law establishes the procedure for citizenship acquisition and loss for the Republic of Moldova.

**Preconditions for the naturalization** are: 10 years of lawful and habitual residence (8 years for refugees and stateless persons, 3 years for persons married to RM citizens); knowledge and observance of the constitution, knowledge of the state language; having legal sources of subsistence; loss or renunciation to another citizenship, when possible. Due to the fact that beneficiaries of humanitarian protection have the same rights and duties as refugees according to Article 33 of the Law on asylum, the provisions relating to refugees on citizenship are applied to them.

In 2011, the Republic of Moldova acceded to the Conventions regulating statelessness from 1954 and 1961. Since February 2012 the Republic of Moldova has implemented the mechanism of recognizing statelessness, and has introduced a separate chapter in the Law on the regime of foreigners.



**Legal Framework of Migration  
Ukraine**

**LYUDMILA DAVYDOVYCH**

*Legal Module*



Ukraine has been an active legislator in the field of immigration control and management since the late 1990s. The activities were related mainly to the Ukrainian participation in regional consultative processes as well as changing migration patterns. International organizations underscore that since state independence, Ukraine has made tangible progress towards bringing its migration legislation and advocacy practice in line with international human rights standards. It adopted modern migration legislation, created a State Migration Service, incorporated international agreements on human rights into its national legislature and developed international cooperation in the area of migration.

Ukraine's migration legislation has recently undergone serious reforms mainly due to the implementation of the EU Visa Liberalization Action Plan presented by the EU to Ukraine in November 2010. This document is a road map for complex reforms in migration, visa, asylum and some other policies of Ukraine (e.g. document security, public order and security, personal data protection, etc.). It consists of two main phases – legislative (drafting and adopting of new national legislative acts) and implementing (implementation of new legislation). On 22 April 2011, National Plan on Implementation of the EU-Ukraine Action Plan on visa liberalization was adopted. This document sketches a clear list of legislative changes and amendments Ukraine will adopt in the years to come in the field of migration.

### **Legal and political framework governing migration and mobility**

2012 Law on the Legal Status of Foreign Citizens and Stateless Persons

2012 Law on Refugees and Persons in Need of Subsidiary and Temporary Protection

2012 Action Plan on Integration of Refugees until 2020

2011 Law on Combating Trafficking in Human Beings

2001 Law on Immigration

2001 (amended in 2005) Law on Citizenship of Ukraine

1996 Constitution of Ukraine

### **Bilateral agreements**

Ukraine concluded **bilateral agreements on labour activities and social security** of migrant workers with Russian Federation, Moldova, Belarus, Armenia and Azerbaijan. Ukraine has also concluded bilateral agreements on Social Security with Bulgaria, Latvia, Lithuania, Romania, Slovakia, Hungary and Czech Republic.

### **Regional Agreements**

Ukraine is a party of following multilateral agreements in the framework of CIS:

- 2008 CIS Convention on the legal status of migrant workers and members of their families, coming from the CIS participating states, which apart from Ukraine has been ratified by Armenia, Azerbaijan and Belarus
- Agreement on cooperation in the field of labour migration and social protection for migrant workers of 15 April 1994 and the 2005 Protocol thereof.
- 1998 Agreement on cooperation between CIS Member States in combating illegal migration
- 1977 Council of Europe Convention on the Legal Status of Migrant Workers, which Ukraine ratified in 2007
- 1997 Council of Europe Convention on Nationality, ratified by Ukraine in 2006

## Human Trafficking

According to Article 149 of the Criminal Code of Ukraine **human trafficking or the unlawful treatment against human beings**, as well as any kind of assistance in human trafficking is a grave criminal offence (subject to imprisonment for 3-15 years).

The Law on Combating Trafficking in Human Beings, adopted in 2011, establishes organisational and legal principles of combating trafficking in human beings, the main strands of the state policy and the basis for international cooperation in this field, the powers of executive authorities, the procedure to declare the status of victims of trafficking in human beings as well as the procedure for the provision of assistance to such persons.

Ukraine ratified Palermo Protocols in 2004 and the Council of Europe Convention on Action against Trafficking in Human Beings in 2010.

## International Protection

The issues of asylum, refugee status and subsidiary protection are regulated by the Constitution of Ukraine, 'The Law on refugees and persons in need of complementary or temporary Protection'.<sup>1</sup>

In 2002 Ukraine also ratified The United Nations Convention Relating to the Status of Refugees. The United Nations High Commissioner for Refugees has his permanent mission in Ukraine.

In accordance with the 2011 Law **the following forms of international protection** exist in Ukraine:

- **refugee status:** in compliance with Geneva Convention;
- **complementary (subsidiary) protection:** the form of protection, which is granted in Ukraine on an individual basis to foreigners and stateless persons who cannot obtain Geneva Convention refugee status, but need protection whereas such person was forced to arrive in Ukraine or stay in Ukraine in consequence of the threat to his/her life, safety or freedom in the country of origin owing to fear of execution in relation to him/her a death penalty or
- implementation of judgment on death penalty, torture or inhuman or degrading treatment or punishment);
- **temporary protection:** which is an exceptional time-bounded measure, and is granted to foreigners and stateless persons who arrived *en masse* from the country bordering Ukraine, and cannot return to the country of habitual residence owing to circumstances such as external aggression, foreign occupation, civil war, ethnic clashes, natural disasters, man-made disasters or other events which violate public order in a certain part or throughout the country of origin.

## Outward migration

### Visas

Ukraine (UA) has concluded the Visa Facilitation Agreement with the EU, which is in force since 2008 and which was amended in 2013. Moreover, it has signed special Local Border Traffic Agreements with its EU neighbours: Poland in 2009, Slovak Republic in 2008, and Hungary in 2007,

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<sup>1</sup> 'The Law on refugees and persons in need of complementary or temporary Protection' is available at <http://zakon2.rada.gov.ua/laws/show/3671-17>.



which authorize Ukrainian border residents eligible for an LBT permit to stay in a 30 to 50 km border area of the said countries for a period not exceeding three months, provided that they have legitimate reasons to cross an external land border frequently..

Ukrainian citizens are exempted from the visa requirements in the CIS countries (1992 Agreement), Albania, Antigua and Barbuda, Argentina, Bosnia and Herzegovina, Brazil, Brunei, China, Columbia, Ecuador, Georgia, Guatemala, Hong-Kong, Israel, Macedonia, Malaysia, Micronesia, Mongolia, Montenegro, Namibia, Nicaragua, Palau, Panama, Paraguay, Peru, Salvador, Seychelles, Serbia, Swaziland, and Uruguay.

## Cross-border mobility

According to the Law of 21 January 1994 № 3857- XII on the “Rules of exit of the territory of Ukraine and entry to the UA territory by the citizens of Ukraine”.<sup>2</sup> UA citizens have the right to exit and enter the territory of Ukraine.

The right of the citizens of Ukraine to exit Ukraine may be restricted if subject to criminal inquiry or already sentenced.

## Irregular Migration

Ukraine has signed readmission agreements and agreements on the transfer and admission of persons across the common state border or persons illegally staying on the territory of the states. Ukraine has agreements on readmission with Armenia, EU, Georgia, Turkey, Bulgaria, Denmark, Latvia, Switzerland, Hungary, Poland, Slovak Republic, Turkmenistan, Vietnam, and Uzbekistan.

Agreement on cooperation between CIS Member States in combating illegal migration of 6 March 1998 regulates cooperation between Ukraine and other countries in the CIS area. On this basis Ukraine must develop instruments curbing irregular migration of its own nationals, in accordance with international law.

## Rights and Settlement

Citizens of Ukraine who have decided to reside permanently in another country have to receive a **permit on permanent residence abroad**. The issuance of such permits is within the competence of the State Migration Service of Ukraine. Moreover, Ukrainian citizens permanently residing abroad have to receive permanent consular registration at the Ukrainian Consulate or Embassy.

The Law of 4 March 2004, № 1582- VI “On legal Status of Foreign Ukrainians<sup>3</sup> citizens of other countries or stateless persons that have Ukrainian ethnical origin are considered Foreign Ukrainians.

**Foreign Ukrainians** have preferences as regards entry and stay, work and study in Ukraine: in case of necessity, visas for foreign Ukrainians may be issued as multiple with a term of validity up to 5 years; issuance of visas for foreign Ukrainians is free of charge; there is no need for foreign Ukrainian to present to the consulate of Ukraine abroad any invitation or other proving the purpose of his travel when applying for a visa; foreign Ukrainians have the right to work in Ukraine without work permit and to immigrate to Ukraine outside of the immigration quotas (see below); foreign Ukrainians also have reserved quotas in Ukrainian high schools and Universities.

<sup>2</sup> The Law dated from January, 21, 1994 № 3857- XII on the “Rules of exit of the territory of Ukraine and entry to the territory of Ukraine by the citizens of Ukraine” is available at <http://zakon2.rada.gov.ua/laws/show/3857-12>.

<sup>3</sup> The Law on dated March 4, 2004, № 1582-VI “On legal Status of Foreign Ukrainians” is available at <http://zakon2.rada.gov.ua/laws/show/1582-15>.

## Labour

Article 9 para 32 of the *Law on licensing certain types of economic activity* regulates activities of the recruitment agencies. The license for private employment agency is issued by the Ministry of Labour and Social Policy according to the conditions stipulated by the regulation № 272 of 6 September 2010.

## Citizenship

Article 25 of the Constitution guarantees that UA citizens of Ukraine cannot be deprived of UA citizenship or of the right to change it. However dual or multiple citizenships are not allowed for the citizens of Ukraine.

If a citizen of Ukraine simultaneously becomes a citizen of another country (such cases often happen if according to the law of the second country the foreigner that acquires its citizenship does not have to renounce to his/her previous citizenship) in the legal relations with Ukraine he/she is recognized only as a citizen of Ukraine. Article 19 of the Law “On the Citizenship of Ukraine”<sup>4</sup> stipulates that the UA citizenship is lost if:

1. a citizen of Ukraine has voluntarily acquired the citizenship of another state after attaining his/her majority.
2. a foreigner acquired the citizenship of Ukraine and has not submitted a document certifying the termination of foreign citizenship or a declaration of its renunciation;
3. a foreigner has acquired the citizenship of Ukraine and used rights or fulfilled obligations provided or imposed on him/her by the foreign citizenship;
4. a person has acquired the citizenship of Ukraine to deliberately present false information or falsified documents;
5. a citizen of Ukraine has voluntarily entered military service, security service, law enforcement agencies, justice or state authorities or bodies of local self-government of another state without the permission of UA authorities.

## Inward migration

### Visas

As of November 2012 in accordance with the national legislation of Ukraine and its bilateral agreements, citizens of: Andorra, Argentina, Armenia, Brazil, Croatia, Canada, the European Union, The Holy See, Israel, Georgia, Japan, Republic of Korea, Kazakhstan, Kyrgyzstan, Macedonia, Montenegro, Paraguay, Tajikistan, United States of America, do not need short – stay visas for the period of stay that does not exceed 90 days in 180 days.

Citizens of Bosnia and Herzegovina, Brunei Darussalam, Serbia and Turkey may enter Ukraine without a visa for the period of stay that does not exceed 30 days, while for the residents of Hong-Kong (China) the period is up to 14 days.

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<sup>4</sup> The Law “On the Citizenship of Ukraine is available at <http://zakon1.rada.gov.ua/laws/show/2235-14>.

## Cross-border mobility

The Law “On the legal status of foreigners and stateless persons”<sup>5</sup> stipulates that foreigners and stateless persons may enter the territory of Ukraine with a valid travel document.

Article 8 of the ‘Law on Border Control’ stipulates the conditions to enter Ukraine: a valid travel document; a valid visa; a valid purpose of stay; proof of sufficient means of subsistence for the duration of the stay and for the return.

Asylum seekers are exempted from these entry conditions (see below).

## Irregular Migration

The Law “On the Legal status of foreigners and stateless persons” defines as an **irregular immigrant** a foreigner or stateless person who crossed the border avoiding the border crossing or border control and failed to promptly apply for refugee status or asylum in Ukraine, as well as a foreigner who overstayed the visa or residence permit.

Rejected asylum seekers, as well as over-stayers or those who cannot depart due to lack of funds or loss of passport, can apply for Voluntary Return to their countries of origin at the State Migration Service (SMS). The latter issues a **certificate of the voluntarily returning person**, serving as a temporary residence permit. Voluntary Return has to take place **within 60 days** after application. The returnees are not detained but have to **report the place of stay** at the SMS once a week.

**Forced return** is ordered by the SMS, the State Security Service or the border agency (subsequent notification of a prosecutor within 24 h) in relation to the foreigners who violate the legislation on the legal status of foreigners; are detained in controlled border areas because of the unlawful border crossing; pose risk for national security/public order/public health. The persons in question are given up to 30 days for an independent departure. The non-compliance leads to **forced expulsion**. 3 year **entry ban** is possible in case of forced return. Foreigners are not detained but can be accompanied by representatives of the competent authorities.

**Forced expulsion** is ordered by an administrative court at the request of the competent authorities in case of noncompliance with the decision on voluntary departure or if there are reasonable grounds to believe that foreigners or stateless persons will avoid fulfilment of this decision. The court defines the period of **entry ban**. Its decision on forced expulsion can be appealed. Foreigners are placed by SMS or border agency (with subsequent notification of a prosecutor within 24 h) in **Centres of Temporary Stay** up to 12 months.

Article 332 of the Criminal Code of Ukraine<sup>6</sup> the **illegal transfer** through the state border of Ukraine, **organizing of illegal transfer** through the state border of Ukraine, **presiding of illegal transfer or assistance in the illegal transfer** through the state border of Ukraine **are criminal offences** (subject to imprisonment for 3-9 years).

## Rights and Settlement

Before obtaining permanent or temporary residence permits, foreign nationals and stateless persons have to obtain a long-stay “D” visas which are issued by Ukrainian Embassies and Consulates abroad. There is no way to obtain a long-stay visa in Ukraine or at the border. The long-stay visas are single-entry visas and are valid for 45 days.

<sup>5</sup> The Law “On the legal status of foreigners and stateless persons”, adopted on September, 22, 2011, № 3773-VI is available at <http://zakon3.rada.gov.ua/laws/show/3773-17>.

<sup>6</sup> The Criminal Code of Ukraine is available at <http://zakon3.rada.gov.ua/laws/show/2341-14>.

The Ukrainian long-stay visas are issued for the purpose of: employment immigration; study; international technical assistance; religious mission; work at the branch of foreign company; work at the branch of foreign bank; mass-media; cultural and sport exchange; volunteer work; family reunification.

The Law “On the legal status of foreigners and stateless persons” the Law “On Immigration” stipulate that the permanent residence permit may be issued to the foreigners or stateless persons that received an immigration permit. Foreigners may immigrate to Ukraine within the ‘immigration quota’ set up by the Government of Ukraine.

The ‘immigration quota’ includes the following categories of immigrants:

- 1) persons working in the field of science and culture, whose immigration to Ukraine is within Ukrainian national interests;
- 2) highly qualified specialists and workers, whose specialties and skills are urgently needed for the national economy;
- 3) investors that have made a registered investment into the national economy (not less than USD 100.000);
- 4) brothers, sisters, grandmothers and grandfathers as well as grandsons and granddaughters of the citizens of Ukraine; persons that have held Ukrainian citizenship before;
- 5) parents, spouses and minor children of the immigrant;
- 6) persons that have been residing within the territory of Ukraine permanently from the day of granting them the status of a victim of human trafficking.

**Outside the immigration quota** the permanent residence permit is issued to:

- 1) spouse (in case of being married for 2 years or more), minor children and parents of the UA citizen;
- 2) persons that are legal guardians of the citizens of Ukraine or persons that are under the legal guardianship of the UA citizens;
- 3) persons that have the right to obtain UA citizenship;
- 4) persons whose immigration presents a state interest for Ukraine;
- 5) foreign Ukrainians, their spouses and children;
- 6) Former citizens of Ukraine who stay permanently in Ukraine after the decision to terminate the citizenship.

In all other cases a temporary residence permit is issued whose validity period is linked to the purpose of stay. Article 24 of the Law ‘On legal status of foreign citizens and stateless persons’ provides that the term of validity of temporary residence permit may be shortened by the State Migration Service of Ukraine in case if the legal basis for the foreigner to stay in Ukraine no longer exists.

The work permit is obligatory in all cases, except: the foreign citizen is invited to work at a branch of a foreign company or a foreign bank or to fulfil non-profit activities (e.g. volunteers, etc).

Work permits are issued by the State Centre of Employment of Ukraine or by its regional divisions for one year (initially). Work permits are issued only on the request of the employer that has been registered at the State Centre of Employment as the taxpayer to the State Obligatory Social Insurance Fund and is not indebted to it.

The temporary residence permit issued to workers allows entry and exit from the UA territory.

## Labour

Labour migration of foreigners is regulated by the Constitution of Ukraine, the Law ‘On legal status of foreigners and stateless persons’, the Labour Code of Ukraine and the Decree of the Government of Ukraine № 322 of 8 April 2009 ‘On The Rules of issuance, extending and cancellation of the work permits of foreigners and stateless persons’.<sup>7</sup>

The enterprises, state authorities and organizations have the right to invite foreigners and stateless persons to work in UA (see above).

As of 1 January 2013, new legislation is in force. It closed some important gaps in the field of labour migration. Consequently, foreigners covered by various forms of international protection (see below) as well as permanent immigrants are entitled to employment on the same conditions as Ukrainians. However, the right to work for temporary migrants is limited: it still depends on the employer and there are no state-level solutions to recruitment.

## Citizenship

The Law “On the Citizenship of Ukraine”<sup>8</sup> stipulates that dual citizenship for foreigners and stateless persons acquiring the citizenship of Ukraine is not allowed. If a citizen of a foreign country wants to acquire Ukrainian citizenship he/she is obliged to renounce previous citizenship.

According to Article 6 of the Law Ukrainian citizenship may be acquired:

- 1) by birth (to Ukrainian parents or in cases where the child would be stateless according to the legislation of the country of parents’ citizenship);
- 2) by territorial origin;
- 3) due to admission to the citizenship;
- 4) due to restoration of the citizenship;
- 5) due to adoption;
- 6) due to taking a child under the guardianship or ward, placing a child into a child-care institution, medical institution, foster home or adopting family, or due to placing a child into a patronage fostering family;
- 7) due to taking a guardianship of a person, declared incapable by a court;
- 8) in relation to Ukrainian citizenship of one or both parents of the child;
- 9) due to recognition of the fact of paternity and maternity, or due to establishment of the fact of paternity and maternity;
- 10) on the basis of other grounds, provided by the international and bilateral agreements.

The main pre-conditions for the naturalization are:

1. Recognition and observance of the Constitution of Ukraine (254к/96-BP) and the laws of Ukraine;
2. Filing of a declaration of absence of foreign citizenship (for stateless persons) or an obligation of renunciation of foreign citizenship (for foreigners);

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<sup>7</sup> The Decree of the Government of Ukraine № 322, dated April, 8, 2009 ‘On The Rules of issuance, prolonging and cancellation of the work permits foreigners and stateless persons’ is available at <http://zakon2.rada.gov.ua/laws/show/322-2009-%D0%BF>

<sup>8</sup> The Law “On the Citizenship of Ukraine is available at <http://zakon1.rada.gov.ua/laws/show/2235-14>

3. Permanent lawful residence at the territory of Ukraine during the last **five years** (2 years for spouses of UA citizens, 3 years for refugees);
4. Permit for immigration (except for recognized refugees);
5. Basic knowledge of the national language;
6. Means of subsistence (not applicable to refugees).

## **CHAPTER 3**

### **Institutional and Policy Framework on Migration and Asylum**





**The Migration Policy  
of the Republic of Belarus**

**OLEG BUKHOVETS**

*Socio-Political Module*



The policies of Belarus in the area of migration processes regulation aim to ensure national security, sustainable economic development, and the protection of citizens' rights.

From the time that the Republic of Belarus became independent, it developed a whole system of regulations governing the legal status of foreign nationals and stateless persons, and issues of labour and forced migration.

The Republic of Belarus's migration policy in the area of external labour migration aims to improve the regulation of the export and import of labour, protect the national labour market from uncontrolled streams of foreign labour, and support employment abroad for Belarusian citizens to counter a soft domestic labour market.

A licensing procedure has been established in the Republic to implement activities that attract foreign labour and employ citizens of the Republic of Belarus abroad. This type of activity is carried out by legal authorities and individual employers, who according to the prescribed procedure have received a special permit (a license) which the Ministry of Internal Affairs of the Republic of Belarus is authorized to issue.

The Republic of Belarus also attaches great importance to issues of forced migration. The legal establishment of relevant policies started as early as 1995 with the adoption of the law "On Refugees." In 1999, further restrictions were added; the provisions of the law did not apply to aliens whom were strongly suspected, in spite of the goals and principles of the UN, of being guilty of acts; quotas of registered applications for refugee status were also introduced. The law provides for the granting of refugee status to a person who in absence of the necessary circumstances has relatives who have received the status. The law also specifies a refugee's rights and obligations. In particular, it establishes the right of refugees to participate in integration programs, to receive assistance in the area of vocational training or employment, social security, education, the acquisition of property, and applications for permanent residence or for citizenship seven years after the receipt of refugee status. In 2001, the Republic of Belarus acceded to the 1951 Convention and the 1967 Protocol and subsequently developed a third version of the law "On Refugees." The new version (2003) provided for the right of an alien, whose application for refugee status was registered, to employment, the education of children in institutions providing general secondary education, and judicial protection. In 2006, changes were made to the law regarding the authority of the Ministry of Internal Affairs, and an extension of the length of time that one may retain refugee status in case of a temporary departure from the Republic of Belarus to one year.

In 2008, the Republic of Belarus adopted the law "On Granting Refugee Status, Subsidiary and Temporary Protection, to Foreign Nationals and Stateless Persons in the Republic of Belarus." This institution gave additional protection to foreign nationals (stateless persons) who lack grounds for refugee status but who have a well-founded fear of returning to the state of their nationality (their former habitual residence) due to the threat of the death penalty, torture and other cruel, inhuman, or degrading treatment and punishment, either life-threatening or due to violence in armed conflict situations. Subsidiary protection is granted for a period of up to one year and can be extended. Aliens who are granted subsidiary protection in the Republic of Belarus have the right to medical services and employment as do aliens living permanently in the Republic of Belarus. They also have the right to family reunification, residence in specially equipped places, and judicial protection. Temporary protection is granted to a group of aliens whose applications for protection cannot be reviewed individually due to their mass arrival at the same time. The law also defines categories of aliens who are not being expelled, in accordance with the international obligations of the Republic of Belarus, and their legal status. Refined and updated procedures on the reunification of families and identification include a number of provisions that aim to eliminate the abuse of aliens through the procedure of granting refugee status or subsidiary protection.

At the national level, the Declaration of Coordinated Migration Policy by the CIS member states was adopted. The plan of key activities to implement the concept of further development of the Commonwealth of Independent States provided for the improvement of the contractual legal framework of the Commonwealth and its member states participating in the area of migration. Real pre-conditions for overcoming the differences between the national laws of CIS member states have been created, improving the organizational component of cooperation, defining common approaches to recording migrants, and establishing a full-scale information exchange.

A protocol on the coordination of collaboration in the area of migration policy was concluded between the Council of the Heads of Migration Agencies of the Commonwealth Countries, the Council of Internal Affairs Ministers of CIS member States, the Council of Border Troop Commanders, and the Council of the Heads of Security Agencies and Special Services of CIS member states.

### **Programs on the Cooperation of CIS member States in the Fight Against Illegal Migration in 2009-2011**

Within the framework of international cooperation in the area of migration, the Executive Committee of the CIS signed a Memorandum of Understanding and Cooperation with the International Organization for Migration.

On March 26, 2010 a new version of the Republic of Belarus law “On the Procedure of Exit from the Republic of Belarus and Entry into the Republic of Belarus by Citizens of the Republic of Belarus” entered into force, which aims to improve the current procedure of going abroad.

**Republic of Moldova**  
**Immigration: Volume and Policy**

**VALERIU MOSNEAGA**

*Socio-Political Module*



## **Abstract**

Migration of Moldovan population has been one of the main issues since Moldova's independence. Immigration in particular takes place for a variety of reasons: family reunification, study, work, repatriation to homeland, humanitarian reasons to save human life, health, honor and dignity given military, political, religious, racial conflict (refugees and persons who are seeking shelters), etc. It can carry both legal and illegal forms (illegal and illegal transit migration). In terms of volume, number of people, the immigration into the Republic of Moldova is much higher than emigration. Nevertheless, it can help fill in the need for qualified and professional labour-force that Moldova has as a result of mass emigration of its citizens.

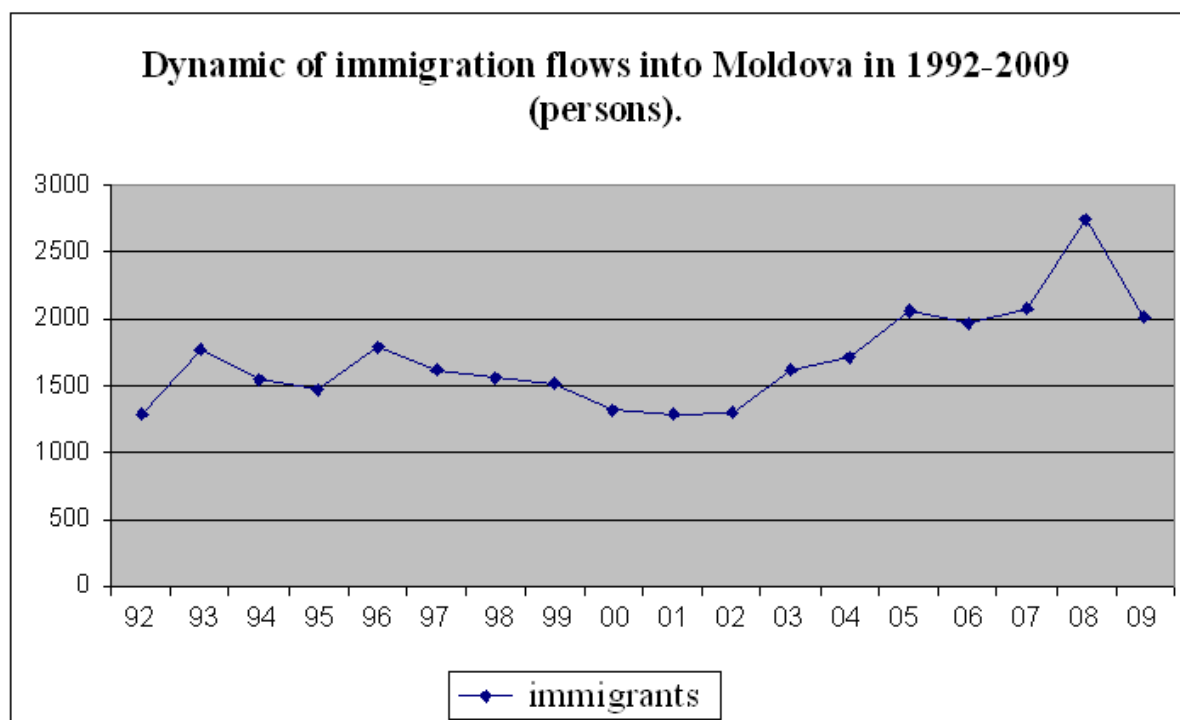
There is certain specificity in the regulation of immigration processes in Moldova. From the beginning the Moldovan government declared its openness to migration issues, while welcoming legitimate (regulated) and counteracting illegal (irregular) immigration. The immigration policy was based on the principle of "immigration and security". One of the first laws adopted was the law "On Migration" which aimed to counter the mass irregular immigration from other post-Soviet republics. After this, for a long time immigration was out of the real attention of the Moldovan authorities, due to a small number of immigrants and irrelevance of the issue to the national public opinion.

Under the influence of European institutions the attitude towards immigration is changing. Governmental agencies are becoming more active in regulating immigration. In an effort to solve the increasing problems of the national labor market, the Moldovan authorities are trying to guide immigration flows to the development of the country, to act on the basis of "Immigration - development". Using co-operation with international organizations, and the aid from the European Union, Moldova takes real steps to unify Moldovan policy framework with the European Union policy framework. At the same time the immigration policy of the Republic of Moldova is becoming more modern, integrated and consistent.

## Volume of immigration flows

Integration of Moldova into international migration processes resulted in the rise of immigration. In 1992–2009 around 31 thousand people legally entered the country<sup>1</sup>.

**Fig. 1. Dynamic of immigration flows into Moldova in 1992-2009 (persons)<sup>2</sup>**



Let us note that family immigration was dominant in 1992-1995, though there was a constant trend towards its decline in significance. Today the share of immigrants reuniting with the family constitutes 2/5 of the total number of immigrants. In 1998-2005 educational immigration became dominant. However, from 2005 labor immigration prevailed.

Moldova is a recipient of both legal and illegal immigration. One of the unofficial routes of illegal transit migration to Western Europe goes through Moldova. However, unlike other routes of illegal transit migration (through Belarus, Russia or Ukraine), Moldovan route is less popular due to greater complexity and risk. Illegal transit migration involves citizens of CIS, as well as South East Asia and Africa, who use relative 'transparency' of CIS borders and try to get to Western European countries. Illegal migration is mainly represented by CIS citizens who benefit from visa-free regime, coming and staying in Moldova to earn money.

After having signed in 2002 the UN Convention (1951) and Additional Protocol (1967), Moldova started to actively participate in international programs of refugee assistance. The total of almost 850 people obtained the status of refugees over this period, and over 700 people were acknowledged as

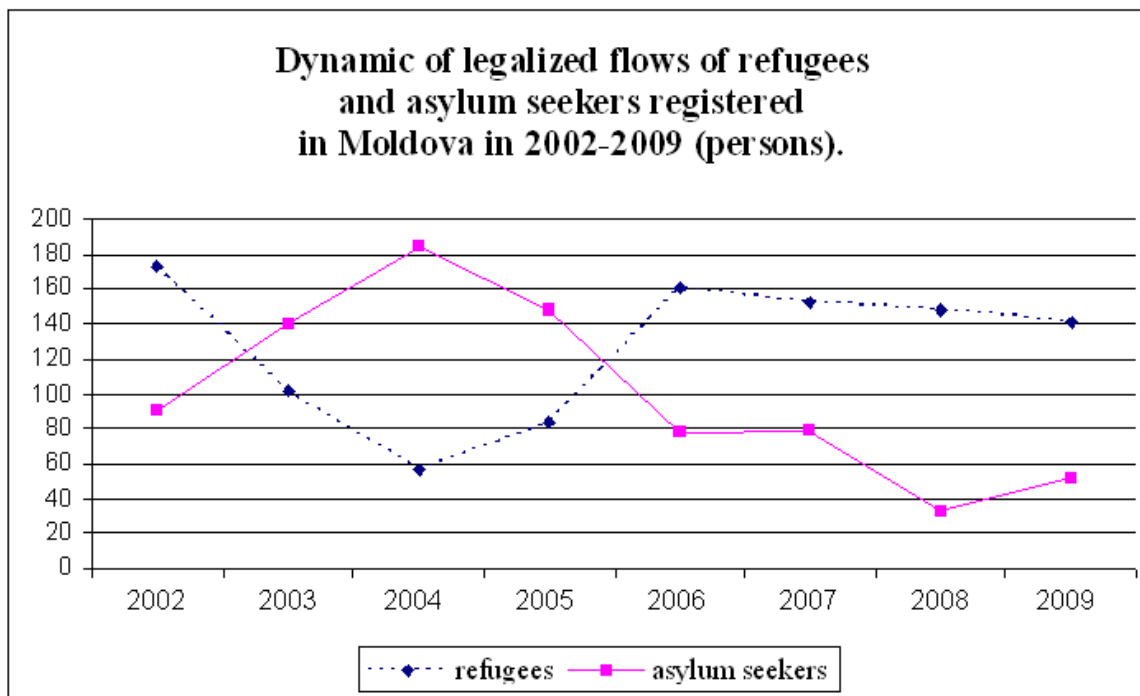
<sup>1</sup> Moraru V., Mosneaga V., Rusnac G. Migration pendulum. - Chisinau, "Tipografia-Sirius", 2012, p.19-26

<sup>2</sup> Mosneaga V. Moldova in the context of international migrations. In: International Migration of population: Russia and contemporary world. International migration of population in the post-soviet territory: two decades of successes, mistakes and expectances. Volum 25. – Moscow, Moscow State University Press, 2011, p.66



asylum seekers. Most people seeking international humanitarian aid came from Russia and were Chechens (around 50% of refugees and around 20% of asylum seekers)<sup>3</sup>.

**Fig. 2. Dynamic of legalized flows of refugees and asylum seekers registered in Moldova in 2002-2009 (persons)<sup>4</sup>**

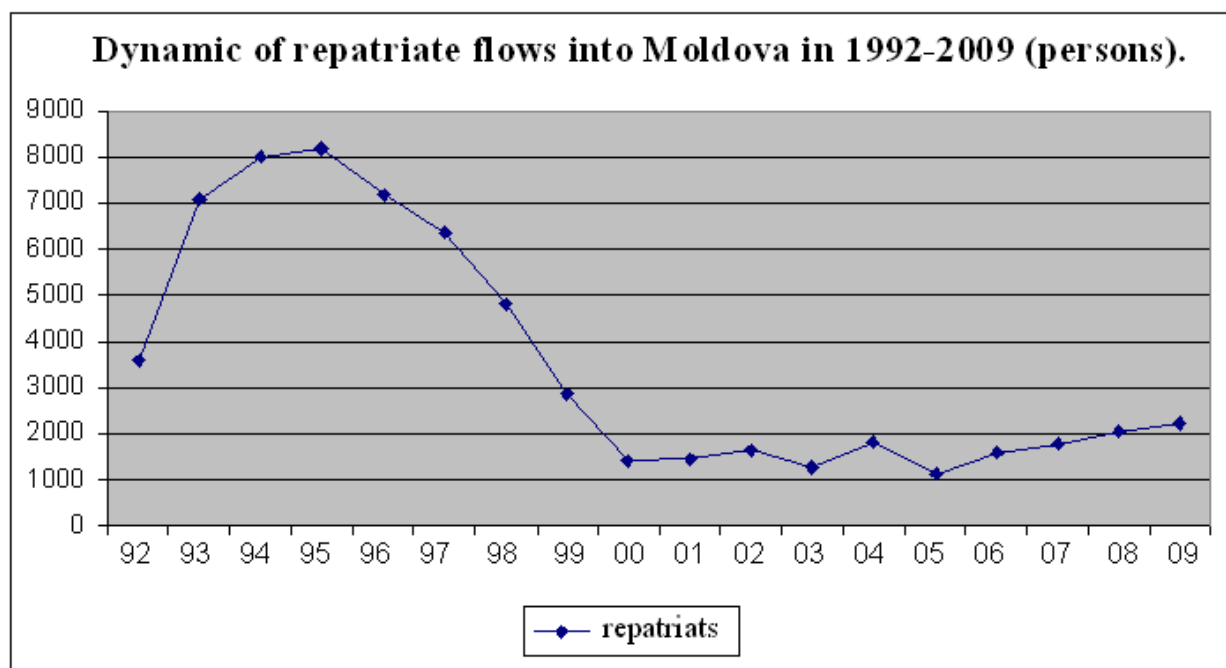


Emergence of the Republic of Moldova as an independent state gave an impetus to repatriation of Moldovans and representatives of other ethnic groups native of Moldova from other countries. In 1992–2009 around 65 thousand people repatriated to Moldova. The main share of repatriates comes from the CIS, primarily from Russia (over a half) and Ukraine (over one third). These two states give the total of 90% of all repatriates<sup>5</sup>.

<sup>3</sup> Moraru V., Mosneaga V., Rusnac G. Migration pendulum. - Chisinau, "Tipografia-Sirius", 2012, p.18-19

<sup>4</sup> Mosneaga V. Moldova in the context of international migrations. In: International Migration of population: Russia and contemporary world. International migration of population in the post-soviet territory: two decades of successes, mistakes and expectances. Volum 25. – Moscow, Moscow State University Press, 2011, p.66

<sup>5</sup> Moraru V., Mosneaga V., Rusnac G. Migration pendulum. - Chisinau, "Tipografia-Sirius", 2012, p.15-17

**Fig. 3. Dynamic of repatriate flows into Moldova in 1992-2009 (persons)<sup>6</sup>**

Initially (1992-1997) 7-8 thousand people annually repatriated to Moldova. This can be explained largely by patriotic sentiments and willingness to live in one's home country. Difficult social and economic situation in the country forced people to be guided by financial considerations. So there was a drastic decline (5-6 times) in the number of repatriates in 1998-2009.

Moldova turned out to be unprepared to accept repatriates: there was no repatriation program and no real repatriation policy, and relevant financial and infrastructural capabilities were absent. In the end all this had a negative effect on attractiveness of Moldova.

### **Moldovan immigration policy**

Formation of Moldovan immigration policy started during the Soviet period<sup>7</sup>. The principle 'immigration and security' was laid in its foundation. Moldovan state declared its openness in migration issues, welcoming legal (regulated) and counteracting illegal (unregulated) immigration. In December 1990 the law "On migration" was adopted, its main objective was to counteract mass unregulated migration from other Soviet republics, there was a quota policy for legal immigrants (quota was 0.05% of the present population). Quota was annually set by the corresponding law.

After becoming an independent state Moldova continued to develop its immigration policy (1994 – Constitution of the Republic of Moldova, laws "On departure from the Republic of Moldova and entry into the Republic of Moldova", "On legal status of foreign citizens and stateless persons in the Republic of Moldova", "On identity documents of the national passport system"). Immigration was not a priority for Moldovan migration policy. Until 2002 practically no specific measures were taken

<sup>6</sup> Mosneaga V. Moldova in the context of international migrations. In: International Migration of population: Russia and contemporary world. International migration of population in the post-soviet territory: two decades of successes, mistakes and expectancies. Volum 25. – Moscow, Moscow State University Press, 2011, p.64

<sup>7</sup> Moraru V., Mosneaga V., Rusnac G. Migration pendulum. - Chisinau, "Tipografia-Sirius", 2012, p.63-99

in this field. Let us only mention the decree of Moldovan Ministry of Healthcare “On adoption of Regulation on arrangement and mandatory medical examination of immigrants and citizens emigrating abroad with a temporary employment purpose” (2000).

Interest towards immigration processes increased after 2001. This was associated, first of all, with institutional reform, i.e. establishment of a single institution (2001) – State Migration Service (from 2002 Department of Migration) that was to elaborate and implement migration policy in various areas.

The law “On migration” and Migration Policy Concept (2002) were adopted; they outlined a complex approach to migration, defined main terms and actors, placed an emphasis on migration policy and migration regulation, characterized the main actors, institutions and their competences. Repatriation, small cross-border traffic, human trafficking etc. started to be regarded in the context of immigration process, in addition to legal and illegal migration. An attempt was made to combine the principles of security and development with regards to immigration.

Second, under the influence of international institutions the Law “On refugees” was adopted, UN Convention (1951) and Additional Protocol (1967) relating to the status of refugees were ratified. Thus, Moldovan society got acquainted with the principles of human rights and immigration. Let us note that adoption of this law raised concern that it would open the door to numerous refugees and asylum seekers.

Measures are taken to improve population records, including immigrants (Concept and Regulations of the automated information system State Population Registry (2002), issuance of invitations to foreign citizens and stateless persons (2004).

Under the influence of the European Union, that became a neighbor of Moldova, immigration policy became intensified. Direct impetus to this process was given by the EU/Moldova Individual Action Plan (2005).

During this period a number of important legal acts were adopted to regulate migration: National Action Program and National Action Plan in the field of migration and asylum; concept of the integrated automated migration and asylum information system; legal acts on identity documents of refugees; National Plan on preventing and combating human trafficking; Law “On asylum in the Republic of Moldova” (2008).

Emigration processes (departure for permanent residence abroad and international labor migration) had a detrimental effect on the demographic situation, professional and qualification potential, the state of Moldovan labor market. At the same time new phenomena were manifested in the field of immigration.

Immigration quota (0.05% of the present population), annually set by legislation (from 1990), was not filled for a long time and hence the system was not functional. For the first time the problem of quota as a limiting factor for immigration flows emerged in 2007, when it was taken up in October.

Moldovan authorities correctly assessed the new trend associated with EU enlargement: this is a way to expand workforce by immigration. In 2008 quota for immigrants coming to the Republic of Moldova to work was changed, from then on it was set “annually depending on the needs of national economy”. This was reflected in laws “On modifying the law “On migration” and “On labor migration” (2008). In the law “On labor migration” the main emphasis was placed on attraction of immigrants, their labor and investment potential for development of Moldovan economy. Thus, an important step was made in migration policy towards using the principle “immigration – development”. Let us note that due to the global economic crisis of 2008-2010 this novelty is yet to function properly.

Cooperation with European institutions had a positive effect on migration policy of Moldova. The law “On regime of foreigners in the Republic of Moldova” was adopted (2010). Lawmakers stemmed from the need to harmonize Moldovan approaches with those of the European Union and rethink the

previous practice of regulating the status of foreigners in the country. The document is complex in nature and presents the overall Moldovan position with regards to this issue. The Government approved the National Plan for preventing and combating human trafficking in 2010-2011, introduced changes and additions to the Regulation “On education of foreign citizens and foreigners in educational institutions of Moldova” (2010).

Starting from 2011 Moldovan policy in the field of immigration became proactive again. National Program was approved to implement EU/Moldova Action Plan in the field of visa regime liberalization (2011-2012). It deals with document security, introduction of biometric passports, counteraction to illegal migration, strengthening of border security, introduction of complex management of state border and migration, improvement of law enforcement activities, combating corruption etc.

Specific steps were made to improve Moldovan migration policy. National Strategy in the Field of Migration and Asylum (2011-2020) and National Strategic Program in the Field of Demographic Security of the Republic of Moldova (2011-2025) were adopted. The Government approved Action Plan for 2011-2015 to implement National Strategy in the Field of Migration and Asylum (2011-2020), as well as regulations “On issuance of invitations to foreigners”, “On approval of technical concept of the automated information system Workforce Migration Records” and issued a decree concerning improvement of the situation in the field of immigration and creation of favorable conditions for foreign investors. The Ministry of Healthcare adopted a new Regulation on procedure of medical examination of migrants.

In 2012 the Government of the Republic of Moldova adopted a regulation “On additional measures for the National Program of implementation of the EU/Moldova Action Plan in the field of visa regime liberalization”.

Let us point out several positive aspects of Moldovan migration policy: its strategic, complex and future-oriented character, understanding of the main objectives, tasks and mechanisms of implementation of adopted programs, plans and specific decisions. Hopefully after completion of the new (second) Action Plan enthusiasm of Moldovan authorities in the field of immigration will not subside, as it happened after completion of the first EU/Moldova Action Plan (2005-2008).

### **Institutions of immigration regulation**

At present the main public agencies<sup>8</sup> responsible for migration and asylum management are the Ministry of Interior (elaboration of policy in the field of immigration, counteracting illegal migration, status of foreign citizens, asylum-related issues, readmission and repatriation etc.), Ministry of Labor, Social Protection and Family (policy in the field of labor emigration / immigration, social security of labor migrants, elaboration of pre-migration, post-migration and (re)integration policies etc.), Ministry of Foreign Affairs and European Integration (protection of rights of Moldovan citizens abroad, determination of visa policy etc.), Border Protection Service (counteracting illegal migration and cross-border crime). Some aspects of migration are within the scope of competence of the Ministry of Economy (financial transfers), National Bureau of Ethnic Relations (diaspora affairs within the country and beyond), Ministry of Education, Ministry of Healthcare etc. Efficient management of migration processes is possible only on the basis of complex approach and engagement of ministries and state agencies of different levels.

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<sup>8</sup> Mosneaga V. Regulation of labor migration in the Republic of Moldova: main stages and their specific features // MOLDOSCOPIE (Probleme de analiză politică). Nr.1 (XXXVI), 2007. – Chișinău: USM, 2007

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**National Strategy for Migration and Asylum:  
an Attempt of Holistic and Integrated Approach  
towards Migration Issues in Moldova**

**ALEX OPRUNENCO**

*Socio-Political Module*





## **Abstract**

The labour migration has been a paramount phenomenon that has affected Moldova's society in numerous ways over the last decade. In response to this development the country's institutional set-up and policy framework evolved significantly. The current state of policy thinking on migration is increasingly driven by the following factors: consolidation of the role of state in managing the developments in this area; progressive adjustment to European policy framework; strengthening of the migration-development nexus and attempts at leveraging human and financial capital of Diaspora into development; fight against illegal migration that appear to be of strong concern for both international community and Moldovan society. At the same time the institutional set-up and policy framework remained disparate and not enough correlated with each other.

The newly drafted National Strategy on Migration and Asylum apparently should address these challenges and bridge the existing gaps. Moreover, the Strategy seeks to link realm of migration and asylum to the general development policy framework of the country. Thus, the Strategy marks a new stage in development of the migration management in Moldova and should address the migration-driven challenges in a comprehensive manner and in full compliance with the European commitments of the country.

This explanatory note tries to look at the major recent development in the national policy framework as represented by the National Strategy for Migration and Asylum (2012-2020). The note outlines main issues tackled by the Strategy as well as the chief objectives to be attained.

The migration is by no means a new trait in Moldova's development: it has been a paramount phenomenon that has affected Moldova's society in numerous ways. In order to address these challenges the relevant institutional set-up and policy framework evolved significantly throughout last decade (Mosneaga 2007, 2009). The current state of policy thinking on migration is increasingly driven by the following factors: consolidation of the role of state in managing the developments in this area; progressive adjustment to European policy framework; strengthening of the migration-development nexus and attempts at leveraging human and financial capital of Diaspora into development; fight against illegal migration that appear to be of strong concern for both international community and Moldovan society. At the same time the institutional set-up and policy framework remained disparate and not enough correlated with each other. Furthermore, adoption of the Action Plan on visa liberalization with the EU now appears as the main driving initiative demanding stronger policy correlation and better institutional coordination. The newly drafted National Strategy on Migration and Asylum apparently should address these challenges (Strategy 2011). By the same token, the Strategy seeks to link realm of migration and asylum to the general development policy framework of the country. Thus, the Strategy is closely intertwined with the Government's activity program as well as will feed in into the new development strategy of Moldova that should be drafted by the end of 2011.

On the macro-level the Strategy covers 3 major areas<sup>1</sup>: (1) regular migration (including, emigration, immigration, and social integration); (2) asylum; (3) policies of prevention of irregular migration and smuggling of migrants. The Strategy rests on the following principles: (1) priority role of state in management of migration processes; (2) coordination of central and local public authorities; (3) taking into account the macro-economic benefits of migration; (4) reduction of all forms of irregular migration; (5) supremacy of law and human rights; (6) active cooperation with the EU; (7) flexibility (periodical review and adjustment of policy framework); (8) transparency.

The Strategy has an extensive set of objectives for each of 3 major areas. In what follows, this explanatory note will highlight the most important of those in order to provide the reader with the sense of direction Moldova's migration policy framework takes.

## **Area 1. Regular migration.**

Recognizing that emigration will remain an important phenomenon, the Strategy emphasizes the need to promote circular migration (as opposed to permanent one) and to counter 'brain drain' from the country. Furthermore, skills and knowledge via returning migrants as well as connections with diasporas should be strengthened. These objectives point to the understanding by the Government of the 'permanent' nature of migration phenomenon and the development benefits the country may enjoy in the process. Furthermore, the Strategy tackles the issue of returning migrants, an important white spot in the previous policy framework.

With respect to immigration, the Strategy outlines the need to formulate the immigration policy that would be correlated with the development goals of the country while the legal framework adjusted to international norms has already been put in place. It also states the need for better practices for integration of foreigners in Moldova.

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<sup>1</sup> It should be noted, however, that Strategy does not follow these direction in this exact order.

## **Area 2. Asylum**

Under this area the Strategy seeks to simply streamline existent procedures (such as criteria, minimal standards for acceptance, etc.) adjusted to European requirements. It also seeks legal improvements to the framework on stateless persons.

## **Area 3. Fighting irregular migration and smuggling of migrants**

The Strategy seeks to enable Moldova to withstand these challenges that are increasingly of regional or international nature. Somewhat newer, Moldova has become transit state for the persons from the third states on their road to the EU. Therefore, the document puts emphasis on stronger cooperation with the relevant EU authorities and the source countries with high migration potential. Interestingly enough, under this area the Strategy focuses solely on Moldova as a transit state, and not as a an eventually host country of illegal migrants.

The Strategy also outlines main tool to achieve the set objectives:

- 1) Visa policies (adjustment to the EU acquis and better information exchange between different relevant institutions);
- 2) Security of documents and protection of personal data (standards for issuance and examination of travel documents adjusted to the EU acquis and information management of personal data according to international standards);
- 3) Integrated border management (reorganization and demilitarization of Border service, introduction of European standards for professional training of civil personnel of the service, and improvement of inter-institutional cooperation on the issues related to fighting illegal migration, border management, and visa issuance);
- 4) Return and Readmission (increasing efficiency of readmission measures, promotion of voluntary return and facilitation of foreigners' return to the source countries in accordance with the readmission agreements);
- 5) Informational support (information support for policy-making and migration management at national and local level, enhancement of the national system for collection, procession and use of the migration data, and establishment of the mechanism for efficient data exchange between relevant institutions).

The implementation of the Strategy should be supported by yearly elaboration Action plans. The first one should be drafted in the second half of 2011. The implementation process should be supervised by the special Committee to be established under the auspices of the Government of Moldova.

To sum up, the newly drafted Strategy marks a new stage in development of the migration management in Moldova and should address the migration-driven challenges in a comprehensive manner and in full compliance with the European commitments of the country.

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**Evolution of Institutional Framework  
Focussing on Migration and  
Asylum Issues in Ukraine since 1991**

**ALISSA TOLSTOKOROVA**

*Socio-Political Module*



There are all the grounds to concur with the observation that although institutional changes in migration area in Ukraine have been discussed and planned for several years, they are still not in full effect<sup>1</sup>. A plethora of research focusing on the institutional mechanisms of migration management in the country<sup>2</sup> pinpointed to the notorious tendency of administration for frequent reorganizations of its governmental bodies and their responsibilities in the area of migration. This created challenges to a precise distribution of responsibilities between agencies, especially in what concerns immigration and asylum policies. Such frequent changes have also entailed some confusion with regard to the specification of particular agency/department responsible for some migrants' detention centers. In early-mid 2000-s this ambiguous situation has spurred a heated debate over the issue of the necessity for the country to have a unified authorized body responsible exclusively for issues of migration policy and management<sup>3</sup>. The issue was obtaining even greater prominence in view of the changing migratory status of Ukraine throughout the years of state independence: if in the beginning of economic reforms it was perceived mainly a sending country for its surplus labor force, then after the EU Eastern enlargement in 2004 it started transforming itself into a transit country and was increasingly becoming a receiving country for migrants. Yet, in the absence of a well-defined migration policy and proper infrastructure for migration management, such processes as mass out-flows of Ukrainian labour, accompanied by in-flows of aliens into the country, especially those undocumented ones, ambiguity of their status and the use of their labour without formal regulations, can entail the risk of losing control over migration fluxes<sup>4</sup>.

The first attempts to craft a unified agency for migration governance in Ukraine were made as early as in 1996, i.e. soon after Ukraine secured state independence in 1991. Yet, they were pinned mainly on collisions between the key stakeholders: Ministry of Interior, Ministry of Justice, State Committee for Nationalities and Religion. At that stage each of them was trying to appropriate the powers, skilled personnel and public resources allocated to this domain by the state. In these conditions a consensus with regard to functions and structure of an expected unified agency was hardly attainable. It is important to note that the Ministry of Labour and Social Policy, responsible for issues of labour migration, was not involved in the negotiations, insofar as these issues were not expected to be governed by the prospective unified agency on migration, despite labour migration fluxes in Ukraine were (and remain to be up till now) the most tangible.

On the level of strategic state documents, migration was highlighted as a policy issue for the first time in 1997, after the adoption and confirmation by the President of Ukraine of the "Main directions of social policy for 1997 – 2000". This document confirmed the status of Ukraine as a labor exporting society, outlined the key directions of state migration policy, but did not provide any elaborations regarding the institutional framework for their implementation.

In 2002 the Draft Law regarding the creation of the State Migration Service (SMS) was submitted for consideration by the Parliament of Ukraine, but was refuted by deputies as a non-priority issue.

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<sup>1</sup> Extended Migration Profile: Ukraine (2011) Building Migration Partnerships (BMP), Kyiv.

<sup>2</sup> Human Rights Watch (2005) *Ukraine: On the Margins*, volume 17, No. 8 (D), November 2005, online URL at: <http://www.hrw.org/sites/default/files/reports/ukraine1105webwcover.pdf> (accessed December 3, 2005); IPP, ICPS (2008) *Migration Trends and Policies in the Black Sea Region: cases of Moldova, Romania and Ukraine*; Zimmer, K. (2008) *Migrants and Refugees in the Buffer Zone: Asylum Policy in Ukraine*, Multicultural Center Prague, online URL accessed on December 6, 2010 at: [http://aa.ecn.cz/img\\_upload/6334c0c7298d6b396d213ccd19be5999/KZimmer\\_Ukraineasylumandmigrationpolicy.pdf](http://aa.ecn.cz/img_upload/6334c0c7298d6b396d213ccd19be5999/KZimmer_Ukraineasylumandmigrationpolicy.pdf)

<sup>3</sup> Global Detention Project (2009). *Ukraine Detention Profile*. Geneva. Online URL at: <http://www.globaldetentionproject.org/countries/europe/ukraine/introduction.html> (accessed December 1, 2010).

<sup>4</sup> Tolstokorova, A. (2011). *Ukrainian migratory corridor*. Research Report. Case study for the Project "Improving EU and US Immigration Systems' Capacity for Responding to Global Challenges: Learning from experiences", European University Institute, Robert Schuman Centre for Advanced Studies, Migration Policy Center, co-financed by the European Commission, Directorate-General for External Relations. Online URL at: <http://cadmus.eui.eu/handle/1814/17842>

However, the necessity to concentrate the state powers and responsibilities for migration regulation in one agency was not taken off the political agenda primarily because it was part of the EU-Ukraine Action Plan, signed in 2002 to come into force in 2007. No surprisingly, it was exactly in 2007 that the first attempt of creating State Migration Service was made in earnest. It was initiated by the Cabinet of Ministers in compliance with the provisions of the Action Plan, but did not advance beyond a few declarative statements and decisions. This initiative was taken over in 2009 by the President's Decree, mandating the creation of SMS. However, at that stage this agency had not started working in full capacity either, since its functioning was not supported in legal, administrative or financial terms.

Until recently, the challenge of creating a unified migration service in Ukraine remained to be critical. This period is sometimes referred to by experts as “the war of decrees”<sup>5</sup> due to a continuous confrontation between the legislative and executive branches of the government. It is worthwhile to note that from numerous attempts of institutional reformations the most suffered the body responsible for asylum. So did the asylum-seekers in Ukraine. After one of such tangible transformations held in 2007 (which was the tenth over the years of Ukrainian state independence), the State Committee for Nationalities and Migration was transformed into the State Committee for Nationalities and Religions. Due to that the Department for Migration and Asylum was not in position to make any decisions for 8 months, because, despite the requirement of migration legislation, the State Committee provisions did not specify which particular agency was authorized by the government to bear responsibility for migration issues. In May 2008 the situation re-emerged when the government adopted the resolution delegating the responsibilities of the authorized governmental agency to the Ministry of Interior. As a result, the procedure for granting refugee status was suspended and applications began to pile up. Furthermore, the Ministry of Interior took over the authority for allocating the places for refugees' placement. In June 2008, the President suspended that resolution by his Decree and concurrently submitted the above issues for consideration by the Constitutional Court of Ukraine<sup>6</sup>.

Continuous institutional transformations had salient implications for personnel skills and work ethics in the field. Every new reformation entailed staff turn-overs followed by influxes of new migration officials with no specialized training in issues they had to deal with. Anecdotaly, as reported by the Human Rights Watch, an immigration lawyer who contacted a migration official to lodge an asylum application on behalf of a client received a reply: “I don't work, I am still under reorganization.”<sup>7</sup>

The resolution of the problem was speeded up after it was addressed by the Ombudsman of Ukraine in 2010 in her appeal on this issue to the President of Ukraine. Her concern about the absence in Ukraine of an advocacy agency for rights of migrants in Ukraine was considered during the administrative reform, launched in late 2010. As a result, on April 6, 2011 the President of Ukraine confirmed the decision of the state regarding the creation of the State Migration Service in Ukraine (SMS). Throughout the years of independence, it was the 5<sup>th</sup> attempt of the state to launch a centralized administrative unit focused exclusively on migration policy and management in the country. The new agency represents an authorised body of the executive power responsible for issues of migration, citizenship and immigration. Its key responsibilities include: granting the Ukrainian citizenship to non-nationals; granting a refugee status to applicants; maintaining documentation of persons who acquired or terminated Ukrainian citizenship; issuing licenses for immigration, etc. Additionally, the agency bears responsibility for the operation of detention camps for refugees, asylum seekers, non-nationals with no citizenship, etc.

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<sup>5</sup> Malynovska, O. (2011). Завдання міграційної політики України у світі візового діалогу з ЄС [Objectives of migration policy in Ukraine in terms of visa dialogue with the EU]. *Безпека документів та міграційна політика: висновки та рекомендації. Проект «Європа без бар'єрів»* [Documents security and migration policy: conclusion and recommendations. “Europe Without Borders” Project]. Київ, с. 31-48.

<sup>6</sup> IPP, ICPS (2008). *Op. cit.*

<sup>7</sup> Human Rights Watch (2005). *Op. cit.*



Certainly, the creation of SMS after so many futile attempts is a big step forward in the development of the national system for regulation of migration processes. It has already enabled the enhancement of some crucial issues in this area, which were awaiting for their regulation for quite a while. Thus, on May 5, 2011 came into force the amendment to the Law of Ukraine on the regulation of migratory processes and the enforcement of responsibility for undocumented (illegal) migration.

However, experts are concerned if the newly-established agency will be able to solve a big cluster of unsolved issues that have piled up throughout the previous years and are awaiting regulation. There are a number of constraints on this way. In particular, the SMS lacks a civic component given that it stems primarily from police structures in the respective ministries. Second, it is not authorized to deal with the issue of labor migration which, by the Decree of the President<sup>8</sup>, was eventually recognized as a serious challenge to the national security in Ukraine.

Yet, despite all the shortcomings, what is important is that the matter has moved on from the dead point and allows hoping for further progress in the formation of national migration policy in Ukraine.

## **Institutional setting and policy makers on migration issues in Ukraine**

### **1. State and local governmental policy-makers and implementers**

- 1.1 The **President**, as the Guarantor of the Constitution, participates in shaping the migration policy (legislative initiative, signing of laws, veto right, management of foreign affairs). He/she takes decisions regarding acquisition of citizenship, granting of asylum in Ukraine, etc.
- 1.2 The **Cabinet of Ministers** establishes the immigration quota. An immigration quota is calculated annually for the corresponding calendar year based on the analysis of immigration process and taking into account the need to limit as much as possible the immigration of foreign nationals and persons without citizenship from countries with a large number of migrants. The quota is approved by the Cabinet of Ministers of Ukraine.
- 1.3 **Ukrainian Parliament Commissioner for Human Rights** has parliamentary control over the observance of constitutional human and citizens' rights, freedom and the protection of every individual's rights on the territory of Ukraine and within its jurisdiction.
- 1.4 **State Border Guard Service (SBGS)** conducts transfer and registration of foreigners through the state border; counteracts irregular migration; checks grounds for foreigners' entry; and takes decisions on shortening the term of their stay in Ukraine and deportation. The responsibilities of SBGS include the following: border control and issuance of permits to individuals, transport vehicles, cargo, property crossing the border; detecting and preventing illegal flows of individuals, vehicles and material products across the border; combating organized crime and irregular migration along the borders; taking decisions regarding expulsion of foreign citizens and stateless persons.
- 1.5 **Ministry of Interior, the State Department for Citizenship, Immigration and Registration of Individuals**, created in 2002, has a status of a governmental agency of state management, i.e. higher than that of a ministerial subdivision. Its functions include: issuance of documents for citizens' departure abroad; registration of foreigners; issuance of decisions on naturalization; combating of irregular migration; and decision on shortening the term of foreigners' stay and deportation.

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<sup>8</sup> Decree of the President of Ukraine as of 20.07.2007, No 657/2007.

- 1.6 **Ministry of Foreign Affairs** protects the rights of citizens abroad; ensures development of ties with Ukrainians abroad and issues visas to foreigners for entering Ukraine.
- 1.7 **Ministry of Labor and Social Policy** has a joint responsibility with the Ministries of Foreign Affairs and Interior in terms of labor migration. Its responsibilities include: participating in the design and implementation of state migration policy; monitoring of implementation of migration policy and related laws; issuance of licenses to agencies mediating employment abroad and control of compliance with license requirements; participation in the preparation and implementation of international treaties; and initiating of scientific research projects.
- 1.8 **State Committee for Nationalities and Religion (SCNR)** in cooperation with the Ministries of Interior, Foreign Affairs, Labor and Social Policy, Public Health, as well as the State Border Guard Service, exercises the following functions: policy development in the field of immigration and refugees; processing of claims for granting refugee status and asylum; provision of shelter to claimants at centers of temporary accommodation for refugees; assisting voluntary returns of refugees and asylum seekers to their countries of origin or permanent residence; and developing programmers for refugee integration into the Ukrainian society.
  - 1.8.1 **Security Service** facilitates state border protection; participates in taking decision regarding the entry, exit and stay of foreigners; and counteracts illegal migration and human trafficking.
- 1.9 **State Committee for Statistics** produces and publishes statistics on migration regularly.
- 1.10 **State Migration Service** is a recently established authorised body of the executive power responsible for issues of migration, citizenship and immigration. Its key responsibilities include: granting the Ukrainian citizenship to non-nationals and granting the status of refugees to applicants; documentation of persons who acquired or terminated Ukrainian citizenship; issuing licenses for immigration, etc. Additionally, the agency bears responsibility for the operation of detention camps for refugees, asylum seekers, non-nationals with no citizenship, etc.
- 1.11 **Regional Migration Services (MS)**. The SCNR and MS are grossly understaffed with 150 staff, 20 in Kiev and 130 in the regions of Ukraine. Additionally these agencies suffer from constant staff turn-over. Other failings include a lack of information on the country-of-origin. There also appears to be no consultation with other organizations and databases, such as the UNHCR publications.

## 2. Quasi-governmental agencies

### 2.1. State research institutes

- 2.1.1. Institute of Demography and Social Studies of the National Academy of Science (NAS) of Ukraine. *Department for Research on Migration* carries out a complex research on migratory tendencies in Ukraine; research on labor migration and its impact on demographic development in Ukraine; migratory prognosis; research in ethnic composition of the population and inter-ethnic relations.
- 2.1.2. Institute of Ethno-National Studies of the National Academy of Science (NAS) of Ukraine (Lviv branch).
- 2.1.3. Institute of Sociology, NAS of Ukraine
- 2.1.4. National Institute for International Security Studies.

### 2.2. State regional employment centers (all Ukrainian networks)

### 3. Non-Governmental organizations (selective)

- 3.1. The **Open Ukraine Philanthropic Foundation** is a private nonpartisan international philanthropic foundation established by Arseny Yatsenyuk and Zbigniew Drzymala to support public diplomacy, raise the profile of Ukraine internationally, and to provide information and legal aid to Ukrainian citizens. Open Ukraine actively cooperates with IOM and World Bank on the migration issues.
- 3.2. The **Kharkiv Regional Charitable Foundation (KRCF) “Social Service of Assistance” (previously “Caritas Kharkiv”)** is a charitable organization that provides assistance to refugees, migrants, orphans, elderly people, and other vulnerable groups of society. KRCF “Social Service of Assistance” has been actively engaged in IOM activities in Ukraine. Since 2005 it has been running a “Centre for Migrant Advice” project within the framework of the IOM Capacity Building in Migration Management Programme.
- 3.3. The **Western-Ukrainian Resource Centre (WURC)** has a long experience (since 1996) in providing consultations and educational services to local NGOs and communities on the questions of NGO administration, strategic development, and community development. It offers a wide range of consulting services to local NGOs, implements democracy research, establishes partnership relations and systems of information exchange, organizes conferences, seminars and trainings, and publishes the all-Ukraine magazine “*Civil Initiatives*”.
- 3.4. **The Southern Ukraine Centre of Young Layers** is an executive partner of the UNHCR in the Odessa region. Since 2000 this NGO together with the UNHCR mission in Ukraine, has been implementing a project that provides legal assistance to refugees and asylum seekers in the Odessa region. The target groups of this project are refugees, asylum seekers, repatriated people, and people who require legal assistance due to the threat of deportation to a country where danger awaits them. The staff of this NGO provides free legal assistance to the beneficiaries and represents them in court and to the authorities.
- 3.5. **Charitable Foundation “Rokada”** offers various kinds of supports to non-nationals: psychological and psychiatrist counseling, as well as consultation on human rights, legislation (e.g. assistance of a professional lawyer on how to acquire welfare subsidies from the governmental); humanitarian assistance (clothes, school kits for children, living essentials and food packs for new comers and for TB-infected person, etc.); educational assistance (language courses, retraining courses).
- 3.6. **Ukrainian Refugee Council** is a network of 10 NGOs offering support to refugees and enforced immigrants. It assists Ukrainian state bodies in provision of assistance to refugees and asylum seekers, fulfilling Ukraine's international obligations.

### 4. International organizations (key actors)

- 4.1. **International Centre for Migration Policy Development (ICMPD)** strives for comprehensive, sustainable and future-oriented migration governance in Ukraine, doing so based on solid evidence and in partnership with all relevant stakeholders at national, regional and international levels.
- 4.2. **Kennan Institute Kyiv Office** is a branch of the Woodrow Wilson Centre, International Centre for Scholars. One of the research priorities of the institute is “Ukraine at the cross-roads of migration routes”. It has issued several collections of essays on intercultural relations in Ukraine and non-traditional migrants in the capital city of Kyiv.
- 4.3. **Caritas Ukraine. The work of Caritas Ukraine** is primarily directed at addressing issues of health, migration, and HIV/AIDS and assisting families and children, disabled individuals, and people in difficult life situations.

## **5. Transnational structures**

### **5.1. UN country team in Ukraine:**

5.1.1. International Organization for Migration (IOM). Counter-Trafficking Partnership Network of NGOs;

5.1.2. International Labor Organization.

5.1.3. United Nations High Commissioner for Refugees.

**5.2. International Committee of the Red Cross (ICRC);**

**5.3. Organization for Security and Cooperation in Europe (OSCE);**

**5.4. European Commission.**

## **CHAPTER 4**

### **Circular Migration**



**The Demographic and Economic  
Framework of Circular Migration  
in Belarus**

**ANASTACIA BOBROVA  
LIUDMILA SHAKHOTSKA**

*Demographic and Economic Module*





## 1. Introduction and definitions

Defining and thus measuring circular migration is a difficult task. Its definition is far from clear either at an academic or at the political level. In a comprehensive article Newland (2009) tries to identify all definitional issues by summarizing four dimensions which have been used to approach circular migration schemes: 1. spatial, which involves both the origin and the destination country; 2. temporal, which includes both short and long term movements; 3. iterative, including more than one cycle; and 4. developmental, describing a win-win-win process implying benefits for the country of origin, the country of destination and the migrant himself.

When trying to measure this phenomenon, Belarus faces specific challenges as, at the time of writing, neither comprehensive statistics nor *ad hoc* surveys capture one specific trait of circularity, namely its repetitiveness.

## 2. Size and characteristics of circular migration in Belarus

Given the abovementioned limitations, this note will refer to the following two kinds of movements, which have long been as specific categories of circular migration (see e.g. Agunias and Newland, 2007):

- a) Temporary labor migration with permanent return. Here, international emigrants leaving to go abroad as counted in annual labour contracts in the period 1994-2011 are taken into account.<sup>1</sup>
- b) Temporary intellectual migration with permanent return. Here, because of data availability, we take into account the period between 2004 to 2008.

### 2.1 Temporary labour migration with permanent return

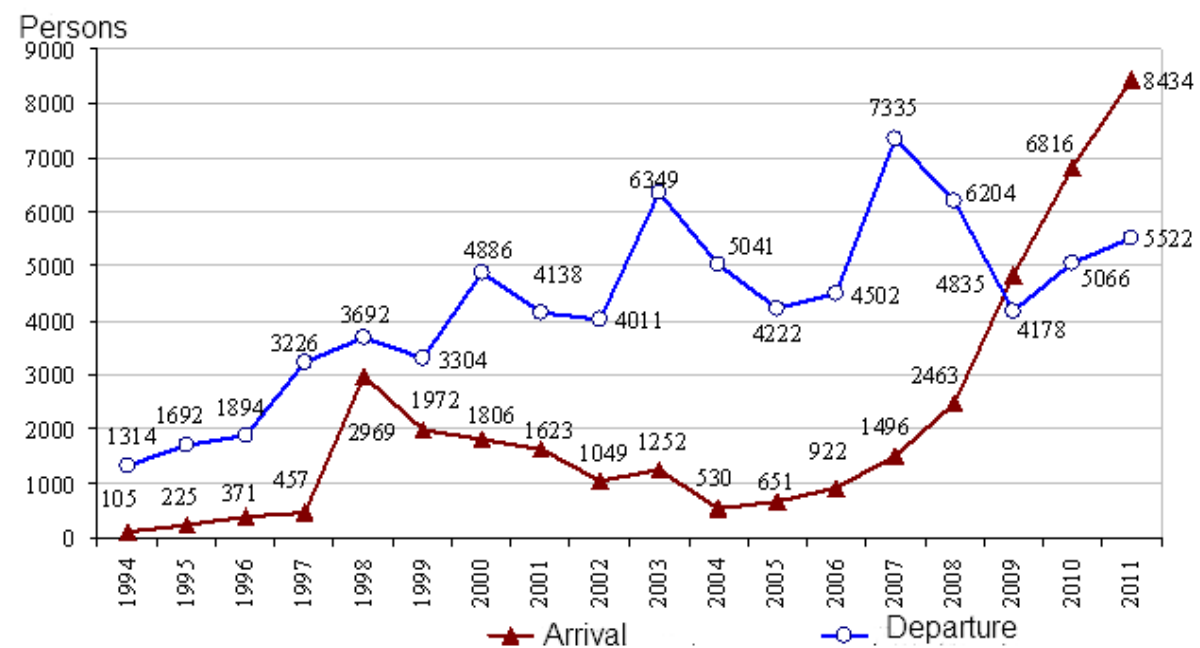
The first group is based on statistics of labour migration, which is, in turn, based on the data derived from the “Card of statistical registration of labour migrants emigration for work abroad”. The Department of citizenship and migration of the Ministry of Interior Affairs of Belarus is responsible for the record-keeping. These cards consist of the main migrant characteristics, such as age, sex, citizenship, education, employment, country of destination and period abroad. Since 1 April 1994 they have formed the basis of labour migrants statistics.

In 2011, almost 6,000 people left Belarus to work abroad. By law, they are circular labour migrants as they are obliged to come back to Belarus in order to renew their contract or in order to get a new contract. The employer also has administrative liability for the conditions of migrants’ stay. So, from a legal point view, all of the labour migrants in this framework can be considered circular migrants.

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<sup>1</sup> Here, a major limitation consists of the fact that these data include all people regardless of their citizenship. So, a *labour migrant* is not necessarily a Belarusian citizen.

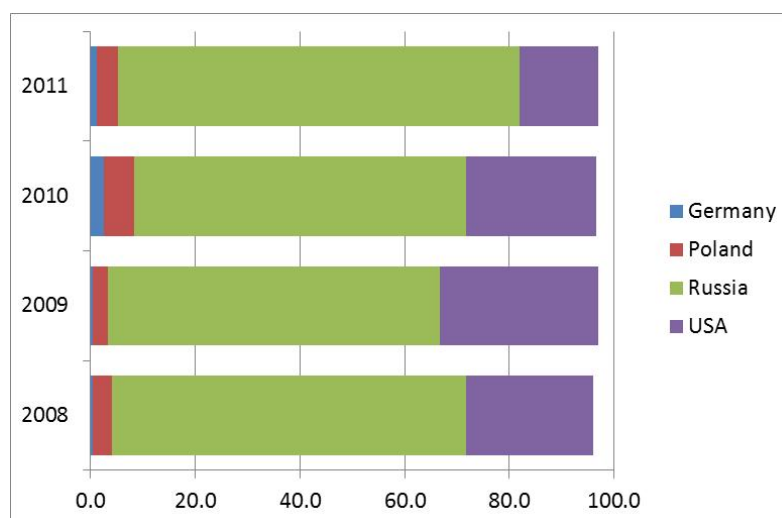
**Figure 1. Arrivals and departures of labour migrants from and to Belarus on the basis of official labour contracts and agreements, 1994 – 2011.**



Source: Registration cards for labour migration, Belarus

In the period 2000-2011, young people aged younger than 24 dominated labor migration (over 60%), which is to a large extent due to their participation in international educational and work projects during summer vacations. The main destination countries for labour migrants are Russia, the US, Poland and Germany (figure 2). These countries account for 97% of labour emigration from Belarus in 2008-2011.

**Figure 2. Temporary labour migrants leaving abroad for a period of up to one year by main countries of destinations, values in %, 2008-2011**



Source: Registration cards for labour migration, Belarus

Around 40% of those who departed are highly-qualified workers and specialists, employed in the service sector and low-qualified workers.

As in the case of temporary migration, the main destination country for permanent migrants is Russia, accounting for over 50% of all departures. Ukraine, Germany, Israel, and the US are among other popular destinations. Unlike temporary migrants, 90% of people whose departure is accompanied by change of permanent residence have received higher or specialized secondary education. Therefore, much is said of “brain drain”, “elite muscles” and “highly-qualified brides”.

## **2.2 Temporary intellectual migration with permanent return**

Intellectual migration is captured by data on researchers<sup>2</sup> moving temporarily to work abroad in accordance with their work institutions as recorded by statistical records.

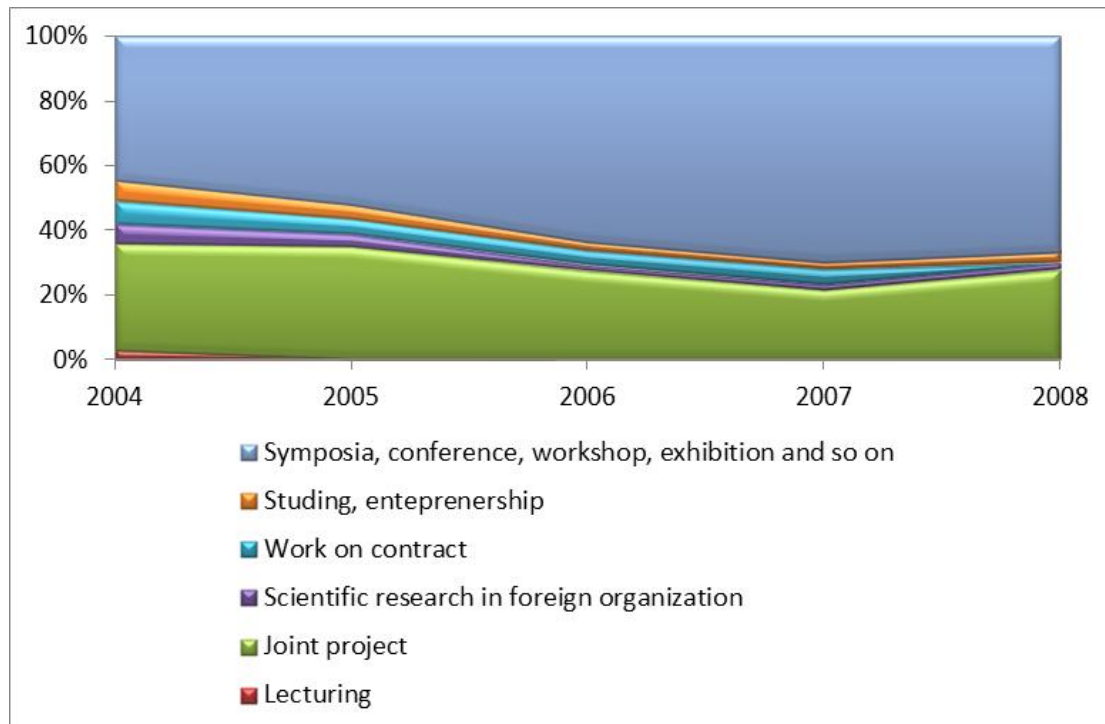
The so-called 2-science form (‘2-nauka’) allowed the accumulation of data for 2004-2007. This provided information not only about the number of researchers who went abroad and who came back. It also gave details of their sex, age, the branch of economy, the duration and purpose of travel, destination countries and research areas. In 2008 a new form of recording has been introduced and information is now available only according for age and academic degree.

Men prevailed among researchers who went abroad 2004-2008 (80%). During this period around 60% of those who left did not have an advanced academic degree. There were instead around 10% of PostDocs in Science and around 30% of Doctors of Science among all intellectual migrants.

At the same time one can observe age difference between those intellectual migrants who left the country temporarily and who came back and those who have not returned (i.e. permanent migrants). Young people aged 40 years and younger account for 55% of permanent migrants, while over 50% of return migrants were aged 40-59 years, 30% of whom were in the 50-59 age group (figure 3). This difference is explained by departure objectives. Young people leave to study abroad and then stay to work. Senior researchers are less inclined to emigrate permanently due to the social advantages they have accumulated in the home country, i.e. senior positions, bonuses, respect of colleagues etc. The main purpose of their departure is to participate in temporary joint projects, as well as symposia, conferences, workshops and exhibitions (figure 3). That is why duration of stay abroad equal to 3 months or less accounts for over 95% of temporary departures.

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<sup>2</sup> Researchers include persons who have involved in scientific or educational establishment in Belarus. Having an advanced academic degree is thus not necessarily a prerequisite to employed there.

**Figure 3. Temporary intellectual migrants outflows by reason, values in %, 2004-2008**

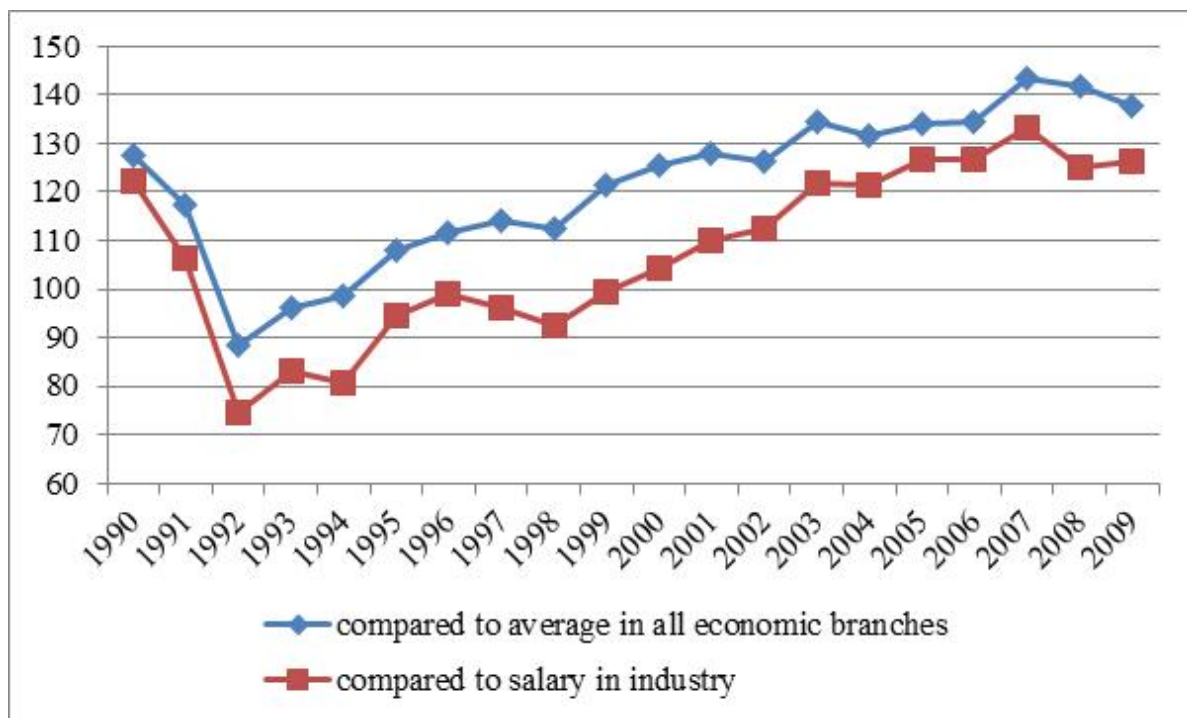
Source: Registration cards for labour migration, Belarus

In terms of destination countries, a similar situation is observed both in the case of temporary labor migration and temporary intellectual emigration. Russia is the leader here, followed by Germany and Poland. One can also observe an increase in temporary departures to Ukraine, China, Venezuela, and Kazakhstan. This increases the number of departures abroad, without reducing the Russian share, which stands at 60%.

Over 80% of researchers who temporarily worked abroad represent “science and scientific services”, which is due to the high share of scientific organizations among all research institutions in Belarus. “Education” and “industrial production” rank second and third. As for specific research areas, the highest activity is observed among employees in engineering (60%) and natural sciences (30%). According to the data for 2001-2007, engineering sciences accounted, instead, only for 10% and natural sciences for almost 70% among emigrating research and teaching staff.

There is an increasing probability that the problem of “brain drain” from Belarus, including the departure of young professionals, will gradually be transformed into the circular migration of research and teaching staff. It could be explained through the example of permanent migration. In the first years after the collapse of the USSR the number of migrants was very large due to newly achieved freedom of movement. But after several years migrants have decreased. The same situation was visible in scientific migration. As researchers had not been able or as they had not known about the possibility of working in foreign organization they preferred to find a job and to leave Belarus. Now they have a lot of information and they are able to combine their work in Belarus with temporary movement abroad. Also in 2000-2010, measures were undertaken to improve the income of researchers. The growth of prestige of scientific work in Belarus needs also to be noted. All these moments helped reduce the number of intellectual emigrants. Over recent years the remuneration of research labor became a priority compared to other industries. Figure 4 compares the income dynamics of researchers with the total population and the population employed in the industry sector.

**Figure 4. Dynamics of the average income of the population employed in scientific/educational institutions compared with other sectors (\*), 1990-2009**



Notes: (\*) 1. Blue line: average salary (population employed in scientific and education institutions/average salary (total employed population); 2. Red line: average salary (population employed in scientific and education institutions/average salary (total population employed in the industry sector).

Source: National Statistics Committee of Belarus, 2007; 2010; 2011.

The relative increase in income allows a reduction in the flow of permanent intellectual emigration but also brings back those who had already left. The Institute of Sociology at the Belarusian National Academy of Sciences carried out a monitoring study of research and teaching staff. This study demonstrated: “only in 2005-2007, 29 highly-qualified researchers, who had worked for a long time abroad, returned to scientific institutions under the aegis of the Belarusian National Academy of Sciences” (Artyukhin, 2008. p.133). It is rather a high number compared to the total number of emigrants in the Belarusian National Academy of Sciences 2001-2007, namely 59 (Artyukhin, 2008. P. 130).

An underdeveloped scientific infrastructure had a significant impact on the growing flows of scientific migration. It pushed researchers to carry out research and development in other countries, either temporarily or permanently. In 2006 there was already a twofold increase in the share of expenses in the infrastructure of public scientific organizations compared to 2001. However, after 2008 a constant decrease in this share has been observed and it went down to 6% of public expenses on science in 2010. Circular migration from Belarus will certainly take place given the underdeveloped research and technology infrastructure. As a rule, researchers carry out their work in laboratories abroad and they analyze the results upon their return to Belarus.

### 3. Conclusions and policy recommendations

It is difficult to correctly evaluate the consequences of intellectual circular migration. However it offers certain advantages for Belarus, compared to the permanent emigration of researchers. First of all, thanks to intellectual circular migration the loss of highly qualified intellectual personnel could be reduced. This is especially important in the present context. Second, the sharing of experience and the

acquisition of up-to-date knowledge enhances human capital and innovative potential. The use of expertise acquired abroad contributes to science-intensive production and increases Belarusian exports. In 2010 the volume of high-technology exports was equal to 2,213 mln. U.S. dollars, or 7.4 % of the total volume of Belarusian exports.

The problem of counting circular migration should also be noted. There is one source of data in Belarus: registration cards for labour migration abroad. It is important to resume the collection of special 2-science forms in all organizations engaged in research. It is also important to renew the survey of scientists provided by the Institute of Sociology, because it provided the only source of data on migration of the scientific staff. This survey was stopped in 2011 due to financial problems.

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**The Legal Framework for  
Circular Migration in Belarus**

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*Legal Module*



In this paper we regard circular migration as recurrent entry (and subsequent departure) of foreign citizens to the Republic of Belarus, as well as Belarusian citizens to other countries for a short period of time for employment and labor activities, as well as for studies. It should be noted that the term 'circular migration' is not used in Belarusian legislation. Nevertheless Belarus concluded a number of international agreements directed at regulation of labor migration and adopted national legal acts on labor migration and other types of migration that we can consider circular.

As far as the main component of circular migration is labor migration, its legislative regulation is ensured by legal acts on labor migration (both international and national) that we have studied in detail in the paper devoted to labor migration.<sup>1</sup>

## **1. International cooperation**

As far as freedom of movement encourages circular migration, international legal instruments ensuring freedom of movement will be analyzed below.

### **1.1 Regional level: Commonwealth of Independent States**

The biggest progress in this direction was achieved within the Commonwealth of Independent States. A number of multilateral agreements were concluded<sup>2</sup>. These agreements encourage circular migration primarily due to the fact that they envisage visa-free entry and transit, as well as unified list of documents for movement of citizens within the CIS. Besides, bilateral agreements were also concluded with post-Soviet States,<sup>3</sup> that contribute to circular migration, as they make provisions of multilateral agreements more specific, identifying rather long terms of stay in the territory of contracting parties, including without the need to register in relevant public authorities. They also specify the lists of documents necessary for crossing of borders and technical procedures associated with crossing of borders and stay in the territory of contracting parties.

Major part of legal circular migration is supported by bilateral agreements in the field of social security. There are such multilateral and bilateral agreements within the CIS<sup>4</sup>. These agreements aim

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<sup>1</sup> See on [www.carim-east.eu](http://www.carim-east.eu)

<sup>2</sup> Agreement on visa-free movement of citizens of the member states of the Commonwealth of Independent States over the territory of its members of 9 October 1992 // Commonwealth: Newsletter of CIS the Council of Heads of State and Government.- 1992.- No. 7; Agreement on procedure of exit of citizens of member states of the Commonwealth of Independent States to the states that are not members of the Commonwealth of Independent States, and exit therefrom of 17 January 1997 // Commonwealth: Newsletter of CIS the Council of Heads of State and Government.- 1997.- No. 1 (25); Agreement between the Government of the Republic of Belarus, Government of the Republic of Kazakhstan, Government of the Kyrgyz Republic, Government of the Russian Federation and Government of the Republic of Tajikistan on reciprocal visa-free trips of citizens of 30 November 2000 (entered into force on 7 June 2002).

<sup>3</sup> Agreement between the Government of the Republic of Belarus and the Cabinet of Ministers of Ukraine on visa-free trips of citizens of 12 June 2009; Agreement between the Governments of the Republic of Belarus and Republic of Armenia on reciprocal visa-free trips of citizens of the Republic of Belarus and Republic of Armenia (entered into force on 19 December 2003); Agreement between the Government of the Republic of Belarus and the Government of Turkmenistan on reciprocal trips of citizens of 22 December 1999 (entered into force on 21 July 2000); Agreement between the Government of the Republic of Belarus and the Government of the Republic of Uzbekistan on reciprocal trips of citizens of 19 January 2005; Agreement between the Government of the Republic of Belarus and the Government of Azerbaijani republic on reciprocal visa-free trips of citizens signed on 15 May 2006.

<sup>4</sup> Treaty between the Republic of Belarus and Latvian Republic on cooperation in the field of social security of 29 February 2008; Treaty between the Republic of Belarus and Lithuanian Republic on social security of 4 February 1999; Intergovernmental Agreement on guarantees of rights of citizens of CIS member states in the field of retirement benefits of 13 March 1992; Treaty between the Republic of Belarus and the Russian Federation on cooperation in the field of social security of 24 January 2006; Agreement between the Ministry of Healthcare of the Republic of Belarus and Ministry of Healthcare and Social development of the Russian Federation on cooperation in healthcare and medical science

to protect the rights of citizens in the field of retirement benefits and healthcare. Most agreements have deficiencies associated with the fact that they are based on ‘territoriality’ principle, and retirement benefits are offered according to the legislation and at the expense of the state where a citizen resides permanently (conditions and level of retirement coverage may worsen when moving to a different country due to variations in retirement legislation, one might need to obtain the status of a permanent resident in the new country etc.). In the meantime, some provisions can have a positive impact on circular migration, for instance, length of service in Belarus and Russia is summed up under the treaty with the Russian Federation.

Taking into account that many migrants from Ukraine are employed in agriculture in the border areas, one can conclude that agreements on labor activities and social protection of migrants have a positive impact on circular migration.

## 1.2 Union of Russia and Belarus, Eurasian Economic Community

The most favorable conditions for circular migration were created within the Union of Russia and Belarus and Common Economic Space, as workers from Russia, Belarus and Kazakhstan are granted expanded labor and social protection rights based on a mechanism similar to the European Union law<sup>5</sup>. Citizens of the sending state working in the territory of the receiving state have equal rights with citizens of the latter in terms of salary, labor hours and leisure, work safety, working conditions and other aspects of labor relations. It is stipulated that length of service and employment experience in the same occupation acquired while working in Belarus and Russia are mutually recognized for their citizens. Wide social rights and guarantees are also envisaged.

Agreements within the Common Economic Space envisage that labor activities of the citizens of the member states in the territory of contracting parties can be carried out without corresponding permits.

## 1.3 Cooperation with countries that are not part of the CIS

Expansion of the possibility to exercise freedom of movement between Belarus and countries outside the CIS is envisaged in bilateral treaties<sup>6</sup>. However, most of them do not encourage circular migration,

(Contd.) \_\_\_\_\_

(concluded in Moscow on 28.04.2011); Agreement between the Government of the Republic of Belarus and the Government of the Republic of Moldova on guarantees of citizens’ rights in the field of retirement benefits of (concluded on 12.09.1995); Agreement between the Government of the Republic of Belarus and the Government of Ukraine on guarantees of citizens’ rights in the field of retirement benefits (concluded on 14.12.1995); Agreement on procedure of retirement coverage of the military servicemen and their families and state insurance of the military servicemen of the CIS member states (concluded on 15.05.1992).

<sup>5</sup> Decision of the Supreme Council of the Community of Belarus and Russia of 22 June 1996 No. 4 “On equal rights of citizens to employment, labor compensation and other social and labor rights”; Treaty between the Republic of Belarus and the Russian Federation “On equal rights” of 25 December 1998 (entered into force on 22 July 1999); Agreement on cooperation in counteracting illegal labor migration from third states of 19 November 2010 (St. Petersburg); Agreement on legal status of migrants workers and members of their families of 19 November 2010 (St. Petersburg).

<sup>6</sup> Agreement between the Government of the Republic of Belarus and the Government of Hungarian Republic on reciprocal trips of citizens using diplomatic and official passports (entered into force on 14 July 2002); Agreement between the Government of the Republic of Belarus and the Government of the Socialist Republic of Vietnam on reciprocal visa-free official trips (entered into force on 25 November 1993); Agreement between the Government of the Republic of Belarus and the Government of the Republic of India on reciprocal visa-free official trips (entered into force on 14 May 1993); Memorandum between the Republic of Belarus and Islamic Republic of Iran on visa-free trips based on diplomatic and official passports (entered into force on 14 April 1995); Agreement between the Government of the Republic of Belarus and the Government of the People’s Republic of China on reciprocal visa-free official trips (entered into force on 1 March 1993); Agreement between the Government of the Republic of Belarus and the Government of the People’s Republic of China on reciprocal group tourist trips (entered into force on 1 March 1993); Agreement between the Government of the Republic of Belarus and the Government of the Republic of Turkey on reciprocal visa-free trips based

as they cover facilitation of business, diplomatic and tourist trips. Only few of them provide for full elimination of visas and are concluded with countries with which migration exchange (including circular migration) is minimal.

#### 1.4 International treaties on local border traffic

In 2010 Belarus concluded international treaties with Poland, Latvia and Lithuania on simplified local border traffic for border residents<sup>7</sup>.

Under international treaties, border residents from Belarus will visit border territories of Poland, Latvia and Lithuania and residents of border territories of neighboring states will visit border territories of Belarus without visas based on local border traffic permits<sup>8</sup>, provided that they have public, cultural or family reasons or justified economic reasons for that. Unfortunately, international treaties with Poland and Lithuania are yet to enter into force.

We believe that agreements on local border traffic will give a powerful impetus to circular migration in the border territories. However, taking into account that only some of them have already

(Contd.) \_\_\_\_\_

on diplomatic, official or special passports of 14 December 1993 (entered into force on 14 February 1994); Agreement between the Government of the Republic of Belarus and the Government of the Republic of Cuba on reciprocal visa-free trips of citizens (entered into force on 10 March 1999); Agreement between the Government of the Republic of Belarus and the Federal Government of the Federal Republic of Yugoslavia on cancellation of visas of 4 March 1999 (entered into force on 10 February 2000); Agreement between the Government of the Republic of Belarus and the Government of the Slovak Republic on visa-free trips of owners of diplomatic and official passports (entered into force on 8 February 2003); Agreement between the Government of the Republic of Belarus and the Government of the Republic of Argentina on visa-free trips based on diplomatic and official passports of 28 October 2004; Agreement between the Government of the Republic of Belarus and the Government of the Federal Republic of Brazil on cancellation of visa-regime for owners of diplomatic, service (official) passports of 26 October 2004; Agreement between the Government of the Republic of Belarus and the Government of the Syrian Arab Republic on visa-free trips based on diplomatic and official passports of 24 August 2005; Agreement between the Government of the Republic of Belarus and the Government of the South African Republic on cancellation of visas for owners of diplomatic and service or official passports of 28 August 2006; Agreement between the Government of the Republic of Belarus and the Government of the Republic of Venezuela on cancellation of visas in diplomatic, service or official passports of 8 December 2007; Agreement between the Government of the Republic of Belarus and the Government of the Republic of Venezuela on cancellation of visas in national passports of 8 December 2007; Agreement between the Government of the Republic of Belarus and the Government of the Arab Republic of Egypt on visa-free trips based on diplomatic, service and special passports of 27 June 2005; Agreement between the Government of the Republic of Belarus and the Government of the Republic of Poland in reciprocal trips of citizens concluded by exchange of notes on 20 December 2007; Agreement between the Government of the Republic of Belarus and the Government of Lithuanian Republic on introducing amendments and addenda to the Provisional agreement between the Government of the Republic of Belarus and the Government of Lithuanian Republic on reciprocal trips of citizens of 26 November 2002 concluded by exchange of notes on 20 December 2007; Agreement between the Government of the Republic of Belarus and the Government of Latvian Republic on reciprocal trips of citizens concluded by exchange of notes on 31 January 2008; Agreement between the Government of the Republic of Belarus and the Government of the Democratic People's Republic of Korea on visa-free trips for owners of diplomatic and service passports of 19 December 2007; Agreement between the Government of the Republic of Belarus and the Government of the Republic of Korea on reciprocal cancellation of visas for owners of diplomatic and service (official) passports of 5 November 2007; Agreement between the Government of the Republic of Belarus and the Government of the Republic of Peru on cancellation of visas for owners of diplomatic, special and (or) official passports signed on 29 January 2010.

<sup>7</sup> Treaty between the Government of the Republic of Belarus and the Government of the Republic of Poland on rules of local border traffic of 12 February 2010 (Warsaw); Agreement between the Government of the Republic of Belarus and the Government of Latvian Republic on procedure of reciprocal trips of residents of local border areas of the Republic of Belarus and Latvian Republic of 23 August 2010 (Riga); Agreement between the Government of the Republic of Belarus and the Government of Lithuanian Republic on procedure of reciprocal trips of residents of local border areas of the Republic of Belarus and Lithuanian Republic of 20 October 2010 (Minsk).

<sup>8</sup> Local border traffic permit is a document giving owner the right of multiple entry, exit and stay only in the local border territories.

entered into force (late 2011 – early 2012), it is too early to make conclusions about their actual impact on migration.

## **1.5 Conclusions**

Analyzing international agreements of Belarus in the field of migration through the prism of their impact on circular migration, we should note that existing system of international legal regulation consists mainly of bilateral agreements, while most favored nation treatment is provided for only within the Union of Russia and Belarus. Agreements vary a lot; hence one should point out the absence of a balanced system of international legal regulation, even at the CIS level. Besides, the norms of above-mentioned agreements do not directly stimulate temporary or circular migration, and legal procedures stipulated therein have the following deficiencies: unbalanced quota system, references to national legislation that in most cases envisages complicated bureaucratic procedures for international migration. Above-mentioned factors, as well as ‘transparency’ of borders in the post-Soviet space and complexity of participation in temporary migration programs (bureaucratic procedures and the need to bear material costs that are significant for migrants) create conditions for illegal migration and contribute to the rise of crime.

## **2. National legislation**

### **2.1 Circular migration of Belarusian citizens**

The existing visa-free system of movement among most CIS countries makes a significant contribution to circular migration. Meanwhile, the remaining obstacle in this respect is the requirement to obtain special employment permits at each new entry. This problem has been resolved only within the Union of Russia and Belarus and within the Common Economic Space. Under the impact of these factors circular migration of Belarusian citizens is directed exclusively towards Russia. Kazakhstan is not a popular destination for circular migration due to distance, cultural differences, and language barrier.

In other directions mainly non-return and other types of migration of Belarusian citizens occur. It should be noted in this regard that unfortunately, Belarusian legislation in the field of migration does not create stimuli for circular migration of Belarusians and does not envisage a system of incentives to encourage Belarusian migrants to return to their home country. Migration policy also does not offer efficient measures to stimulate re-emigration, such as customs benefits for returning migrants bringing in property and means of production acquired abroad; development and adoption of special emigrant programs to stimulate the return of emigrants from abroad and assist in their employment in the country; creation of favorable climate for the use of foreign currency to purchase goods, land and production equipment; fostering of business and social ties with workers who went abroad; establishment of special funds to accumulate financial means for medical care, housing and other needs of Belarusian migrants coming back to the home country.

The fact that Belarusian legislation does not provide measures for stimulating labor migration of citizens having professions that are not in demand in the home country and of workers with low qualification can be considered as a further obstacle for circular migration. These persons could be involved in circular migration and they could come home after having acquired new experience and qualification abroad or after the change of labor market situation in Belarus (creation of new jobs).

### 2.1.1 Double citizenship

A Belarusian citizen cannot be simultaneously acknowledged as a citizen of a foreign state<sup>9</sup>. It should be noted that persons who earlier had the citizenship of Belarus, according to the article 53 of the Law No. 105–Z, have a right to obtain permanent residence permit. In the context of non-acknowledgement of double citizenship by the state, obtaining permit for permanent residence by former Belarusian citizens, no doubt, encourages circular migration of these persons between the country of their citizenship and Republic of Belarus. However, the above-mentioned legal provisions are relevant only for those cases when Belarusian citizens underwent procedure of exit from Belarusian citizenship before obtaining foreign citizenship. At present there is a widespread practice when citizens of Belarus, having obtained citizenship of another state, do not inform relevant Belarusian authorities about that and do not renounce to Belarusian citizenship. Thereby, they can enter Belarus based on their Belarusian passport as citizens of Belarus, as according to the legislation in force Belarusian citizens cannot be restricted in their civil rights due to the possession of another citizenship.<sup>10</sup>

Under the valid legislation, unemployment benefits are paid only in the territory of Belarus, which undoubtedly encourages circular migration, as this stimulates migrants to return to the country after expiration of the foreign contract.

## 2.2 Regulation of circular migration of foreigners to Belarus

### 2.2.1 Circular migration and regimes of stay

Law No. 105–Z defines the regimes of stay of foreigners in Belarus (article 38). Foreigners can temporarily stay (no longer than 90 days), temporarily reside (no longer than 1 year) or permanently reside in Belarus. In our point of view, these regimes encourage different types of migration of foreigners to Belarus.

Status of temporary stay is the basic one for foreigners (article 39 Law No. 105-Z). Regime of temporary residence in Belarus is more comfortable in terms of period of stay and hence more favorable for circular migrants (article 48 Law No. 105-Z).

It should be stressed that regime of stay depends on the purpose of entry. If a person plans to carry out labor activities or study in Belarus, then he or she based on documents submitted obtains a corresponding type of visa and his or her regime of stay and legal status are determined accordingly. For instance, labor migrants and foreigners planning to be entrepreneurs can enter Belarus under labor contracts for the period of up to one year (part 1 article 48 Law No. 105-Z). A foreigner can change his or her legal status of stay in Belarus without exiting it (if there are legal grounds for that indicated in Law No. 105-Z).

As for circular migration, one should note that under valid legislation neither temporarily staying, nor temporarily residing foreigners can automatically receive permits for repeated (multiple) entry; there are no privileges for repeated entries of foreigners. That is why development of circular migration of foreigners to Belarus is hindered by the fact that for every repeated entry and every repeated employment a foreigner needs to collect relevant documents and obtain permits once again. Exception is made for citizens of Russia and Kazakhstan (as a result of above-mentioned international norms that determined special conditions of entry, employment and stay for this category). However, citizens of Russia and Kazakhstan are weakly represented in circular migration to Belarus, as salary level in these countries is higher than in Belarus.

<sup>9</sup> Part 1 article 11 Law No. 136-Z “On citizenship of the Republic of Belarus” of 01.08.2002 (ammended on 04.01.2010).

<sup>10</sup> Part 2 article 11 Law No. 136-Z “On citizenship of the Republic of Belarus” of 01.08.2002 (ammended on 04.01.2010).

In this respect at the contemporary level of migration legislation development, legal provisions that at least expand legal grounds for entry of foreign migrants to the country are exceptionally important for circular migration of foreigners to Belarus. In this context one can mention a positive development, namely giving an opportunity to physical persons (citizens of Belarus) to invite foreign workforce<sup>11</sup>. Now a physical person from Belarus can act as employer, using labor of immigrant workers on the basis of labor contracts (article 1 of the Law No. 225-Z “On external labor migration”). This novelty of Belarusian legislation can have a significant impact on development of circular migration of Russian and Kazakh migrants (in case of favorable economic dynamic in Belarus). Carrying out household work, circular migrants get an opportunity to stay outside the home country for a short period of time, without increasing the scale of permanent migration.

### **2.2.2 Impact of permanent residence permits on circular migration of foreigners to Belarus**

On the one hand, latest changes in national legislation regulating relations in the field of migration can have a positive influence on circular migration<sup>12</sup>. Starting from 6 June 2012 foreigners having valid permanent residence permits in Belarus do not need Belarusian entry or exit visas (article 27 Law No. 105-Z “On legal status of foreign citizens and stateless persons in Belarus”).

Certain preconditions for circular migration of foreigners are included in article 53 of the Law No. 105-Z that lists the grounds giving right to obtain permanent residence permit in Belarus. This right can be used by persons who 1) are employees and specialists that Belarus needs; 2) have exceptional abilities and talent or distinguished merits before Belarus, achievements in science, technology, culture and sports; 3) are foreign investors who invested at least 150 thousand euro in the Belarusian economy; 4) are ethnic Belarusians or their direct relatives in ascending line: children, grandchildren, great-grandchildren born outside contemporary territory of Belarus. Permit for permanent residence in Belarus allows foreigner to have and exercise the same labor rights as citizens of Belarus and freely cross the border of Belarus in any direction.

At the same time, it should be noted that Belarusian government does not seem to be interested in circular migration of foreigners who obtained permits for permanent residence. Quite the contrary, it encourages settled lifestyle, which can be explained by lack of workers in certain sectors of economy. Thus, a containing factor for circular migration of foreigners is the fact that *de jure* status of a foreigner permanently residing in Belarus is not sufficiently stable. Permanent residence permit can be annulled, if a foreigner spends more than 183 days over a calendar year outside Belarus (part 3 article 57 Law No. 105-Z).

## **3. Conclusions and recommendations**

Despite the absence of direct references to circular migration in legislation, the legal system contains a number of norms that directly or indirectly relate to it. However, taking into account the importance of this type of temporary international migration, it is necessary to take measures to promote such migration to and from the country. On the positive side, there are no provisions in Belarusian legislation that would forbid or directly counteract circular migration. There are no restrictions on the number of entries, no periods of banned entry for foreign migrants of any categories, except for delinquent foreigners and other categories that had been legally deported or expelled.

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<sup>11</sup> Decree of the President of the Republic of Belarus of 19.04.2012 No. 197 “On introduction of addenda and amendments to the Decree of the President of the Republic of Belarus of 26 April 2010 No. 200” (modification of subparagraphs 12.17-12.22 of the Decree No. 200 – “On administrative procedures carried out by the state bodies and other organizations upon citizens’ requests”).

<sup>12</sup> On 6 June addenda and amendments to the Law of the Republic of Belarus of 4 January 2010 No. 105-Z “On legal status of foreign citizens and stateless persons in the Republic of Belarus” entered into force.



We believe that migration policy of Belarus ought to include measures aimed at developing circular migration for Belarusian citizens and foreigners both to the CIS countries and other states. For that one should rely on positive experience of the EU member states and countries of North America.



**Circular Migration:  
Belarus**

**LARISSA TITARENKO**

*Socio-Political Module*



Circular mobility being interpreted as a fluid movement of people between countries presumes that it can bring benefits to all the parties involved. However, in regard to contemporary Belarus, circular migration and - broadly - circular mobility bring more problems than benefits. In the long-term perspective, Belarus, as a country of origin, seems to lose more than to gain even if there are some short-term benefits (such as remittances and decrease of potential unemployment pressure on the Belarusian economy). In what follows I explain the pluses and minuses of circular migration.

## **1. Circular mobility between Belarus and the European Union**

Circular mobility to the EU evolves regardless of Belarusian policies on migration, and there is no possibility to stop this flow: it will grow further. According to the data on the EU visas issued for Belarusian citizens in 2011, this number was higher than for any other CIS country, including Russia (Yelisseyeu 2012: 10), 61 visas per 1000 citizens of Belarus. Of course, not all of these people are migrants: many are tourists, visitors, etc. Still, circular migrants are numerous.

The neighboring EU countries are more attractive targets for Belarusian migrants. Therefore, circular migration from Belarus to the EU often has regional character.

Circular migration to each neighboring country has some specific features. However, in all cases, circular mobility to the EU is a way to achieve a higher standard of living than the level available for these migrants if they stay in the home country, Belarus.

## **POLAND**

In 2011, almost every fifth visa (55.2 thousand out of 299.3) issued by the Polish consulates in Belarus was that of the National Long-Stay Visa category (Yelisseyeu 2012: 9). This type of visa is most often issued for those who are either studying in Poland, or working there, or have 'a Pole's Card' (all of them fall into the category of circular mobility). The author also stresses that more than 90 per cent of all the long-stay national visas of the EU countries received by Belarusians in 2011 were issued by the Polish consulates. It is possible to assume that many of these visas were issued for circular migrants.

Due to linguistic closeness of Belarusian and Polish languages, many Belarusian potential trade migrants prefer Poland, especially if they know Polish or easily understand it. This group (migrants to Poland) can be divided into two subgroups:

1. well-educated professionals (university professors, PhD lectures, trainers, doctors) who are in need in Poland as they substitute Polish professionals migrated to the West. Belarusian migrants either constantly live in Poland during the term of employment or regularly circulate for 1-2 weeks periods every month or so. Sometimes they also keep their jobs in Belarus, so that their employment in Poland is a source of additional income and support for their families in Belarus.
2. qualified workers, e.g. truck drivers (as they know Russian to communicate in the CIS, they usually drive Polish trucks to the East – Russia, Ukraine, Belarus. Such drivers are less expensive for Polish companies than Polish drivers). Having a working visa to Poland and being citizens of Belarus, they do not need visas to go to the CIS, and it is also an advantage. They live in Poland for months, but regularly visit their homes in Belarus.

Also, some workers and less qualified personnel work in Poland (partly on illegal basis), other people regularly visit their relatives in Poland.

## LITHUANIA

This is a second EU country by the number of visas issued for Belarusians (in 2011 – 144.3 thousand visas, 34 per cent of them multiple visas) (Yelisseyeu 2012: 7). The targeted group includes university professors and young well-educated scholars who have moved to Vilnius or regularly visit this city as they are employed at the European Humanities University. Hundreds of students from Belarus either live in Vilnius for the terms of education or regularly commute. Upon graduation, only half of them returns to Belarus. Some journalists and oppositional politicians also shifted their offices to Vilnius and commute regularly in both directions.

Additionally, some workers are temporarily employed in Lithuania (and Latvia) in cases when national languages are not required (e.g. in joint ventures). Some Belarusians have business in these countries, they regularly visit their partners, but not live there.

## OTHER EU COUNTRIES (without common border)

Germany is the most attractive EU country for Belarusians. According to the June 2012 national survey by the Independent Institute of Socio-Economic and Political Studies (IISEPS), 53.7 % respondents expressed a desire to work/study abroad (15.1% in Germany, 11.4% in the US, 8.9% in Russia, and 9.8% in any country), while 41.4% said they wanted to move abroad forever (IISEPS 2012). Italy and Czech Republic are also popular destinations.

Meantime, it is not easy for Belarusians to find a job in the EU countries. Mainly, only researchers and IT specialists are successful: they can get temporary contracts and spend years abroad. The financial crisis in the EU made it much more difficult; nevertheless, those professionals who had already been employed were not affected on the same level as workers. In fact, all EU countries benefit from Belarusian labor migrants as most of these migrants have either vocational or university education (or scientific degrees) and try to abide by the law.

The main driving forces for labor emigration from Belarus are higher salaries, higher standards of living, and much higher quality of life in the EU (this is very attractive for professionals).

## 2. Circular mobility between Belarus and the CIS (including movements in both directions)

The driving force for migrants to Russia is a higher salary for all categories of employment. That is why both workers and professionals move from Belarus. This is a loss for Belarus, as some of migrants moved for job or study would never return back. According to experts, the level of qualification of migrants to Russia is higher than the average level of employed labor force in Belarus. The same is with level of education. According to experts' calculations, 50-60 % of migrants have higher education (complete or incomplete). Most often the qualified migrants are doctors (around 12 %), engineers (10 %), and biologists (7 %), while among the immigrants to Belarus almost 30 per cent are low qualified workers (Luchenok and Kolesnikova 2011).

**Russia** is the major destination for Belarusian circular migrants. According to some estimations, more than 90 per cent of labor migrants go to Russia (Luchenok & Kolesnikova). During the last decade and especially in 2011-2012, Russia has become more attractive than earlier because of a significant decrease in the incomes and the standard of living in Belarus. Now many workers in the fields of construction, agriculture, and petroleum production temporarily work in Russia, either for several months or years (then they visit their families only during vacations). In this case, both Russia and Belarus have some benefits: Belarus escapes from the potential growth of unemployment and receives remittances from Russia. However, Russia benefits much more: Belarusian workers are well-trained, speak Russian, have similar cultural traditions, and usually do not bring their families to

Russia that might become an extra burden for employees or the local authorities. For Russia, bringing in Russian-speaking migrants from the CIS is a part of Russian “Strategy 2020.” So, Belarusian workers and students coming to Russia are welcome. Usually, Belarusians go to particular regions in Russia where there exist networks of such labor migrants (Moscow, S-Petersburg and their oblasts, Tiumen, Hanty-Mansiysk, and oblasts near the state borders – Smolensk, Briansk). Thus, only during the first six months in 2012, Belarusian industries lost almost 18,000 employees, construction – more than 17,000, and most of them found jobs in Russia (Belstat 2012).

This trend in labor mobility is non-stop. Due to the existing Customs Union and since 2012 – Common Economic Space - Belarusians can easily find a legal employment in Russia (Kazakhstan takes the third place following Russia and Ukraine). Being in the Customs Union, Belarus increases the prices inside the country in order to make them similar to Russian, while salaries are still much lower for the similar categories of professionals (which makes it impossible to keep them at home). Therefore, the **Customs Union** is contributing to the labor mobility to Russia – whether this was expected by the Belarusian policy makers or not (at least, there are no official statements on this matter). High level of inflation in Belarus and weak currency also push some groups of people to think about moving to Russia – either for a certain time or permanently.

**Ukraine** is a less popular destination; however, during the last years, for both economic and/or political reasons, some professionals (journalists, businessmen, etc.) moved to Ukraine as they could find a better job there - in foreign firms, private sector, arts, etc. This flow is relatively small, but for Belarus this is a loss of qualified cadres and potentially innovative individuals, as well as loss of possible foreign investments.

Other CIS countries are not such significant targets for migration for the time being.

### 3. Circular mobility between Belarus and the third countries (non-CIS and non-EU)

The US is the most attractive destination among the third countries (however, not for temporary employment), as it was with Israel in the early 1990s. Currently, “family reasons” are more often indicated for migration in these countries. A small number of Belarusians move to many third countries (e.g. Canada), however, these numbers are not significant. Recently, due to the state agreements, many foreign students go to Belarus from China, some from Lebanon, Syria, Turkey, India, and Sri Lanka.

The main driving force for Belarusians is the same as for the EU, better salaries. This mobility is often not promoted by the state policy, it develops independently.

### 4. Belarusian policy-framework on circular migration

The National Program on Demographic Security of the Republic of Belarus (2011) provides contemporary basis for labor migration policy-framework in Belarus. The main concept applied in this program is *active state regulation of the legal migration flow*. The CIS (namely, Russia, Ukraine and Kazakhstan) is the only geographic space targeted in the policy-framework (Government 2011).

*Circular migration is not a special target in this Program*, it is not conceptualized and, therefore, not effectively analyzed here. Since the official migration balance is positive for Belarus, circular migration is not addressed within its migration policy framework. As for some latent consequences of joining the Customs Union, the government is aware of potential out-migration; however, existing administrative methods of regulating migration do not work effectively.

Therefore, it is quite probable that circular mobility from Belarus is developing mainly regardless of the official Belarusian migration policy.

## **5. Main strengths and shortcomings of Belarusian policy-framework on circular migration**

The Customs Union creates the situation that determines both strengths and shortcomings for the Belarusian policy-framework on circular migration: According to Belarusians laws, currently, the citizens of the Customs Union are allowed to combine job in two countries and/or legally find a job in any place within the Union. This situation stimulates the flow-out of labor force from Belarus. However, as the Belarusian labor market keeps its stability, jobs (mainly low-paid) are available for almost all potential employees from the Customs Union and the CIS. Also, there were no serious ethnic clashes in Belarus. These are the main strengths of Belarusian policy-framework that attract some inflow of migrants from the same region, the CIS.

The main weakness of the policy-framework on circular migration relates to the sphere of economics: low salaries in Belarus push citizens abroad. Migration policy cannot overcome this. Salaries are especially important for young specialists: the government should develop special sets of privileges (social, medical, etc.), provide houses and other social goods and increase the starting level of salaries. Only positive measures can help as the negative sanctions stimulate the young specialists to find new ways out but not to stay at a low-paid position.

Migration policy to invite all kinds of migrants is not effective as many immigrants are non-qualified workers. The level of immigrants' education is lower than average in Belarus while the average age is higher. From the long-term perspective, as the National Program on Demographic Security states, Belarus needs more qualified personnel to arrive. Also, the economic reforms of the existing labor market must reshape employment and increase labor productivity in Belarus without additional increase in employment.

According to some experts, migration forecasts are also a weakness in the migration policy-framework since these forecasts are not completely developed. This weakness relates to the estimation of influence of out-migration on the national labor market, to the perspectives of in-migration, and the scope of labor force losses due to out-migration (Avseenko 2010).

Also, sometimes policy-framework can contribute to illegal and non-documented circular mobility to Russia, if the registered labor migrants (their families) are obliged to pay in full for their apartments in Belarus. The fact that all the legal money transfers from the CIS arrive in Belarus in Belarusian currency, while money transfer from Belarus to Russia must be only in convertible currency, also may contribute that labor migrants seek illegal ways to sustain their circular mobility and the money transfers.

## **6. What can Belarusian government, the European Commission or other relevant bodies do to improve circular mobility dynamics in each of these 3 directions?**

The European Commission can establish regulations for the CIS migrants that would allow them to be employed only temporary and then be obliged to return back home. Such regulations can improve mobility dynamics and make it mutually beneficial. The EU may sign agreements with the CIS on the temporary labor contracts for the CIS migrants.

The Belarusian government already established some measures on migration (National 2011, point 6); however, they are not oriented to the improvement of circular mobility dynamics.

These measures are more targeted on compensations for immigrants, improvement of legal basis for their arrival in Belarus, and return of Belarusian scholars from abroad (however, the financial basis for above-mentioned measures is very limited). Additionally, Belarus (as well as the EU) can issue regulations on the special payments for those migrants who are returning back from the EU.

Other relevant bodies (e.g. international organizations) can increase their visibility in Belarus and employ more Belarusians (especially young specialists). Foreign countries (both the EU and non-EU) can also increase their business investments in Belarus that may create new jobs, while Belarus can invest abroad and bring Belarusian circular migrants to participate in such ventures.



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**The Demographic and Economic  
Framework of Circular Migration  
in Moldova**

**VLADIMIR GANTA**

*Demographic and Economic Module*



## 1. Introduction and definitions

In Moldova, the term “circular migration” is primarily related to labour migration as about 95% of Moldovan nationals staying temporarily abroad are in the economically active population<sup>1</sup> (source: Moldovan Labour Force Survey - LFS).

Although the term is widely used in research the media and legal acts, there is no clear definition of what it means and how it can be measured. Despite this, the European Commission (EC) and the International Organization for Migration (IOM) assist the Government in establishing circular migration schemes with the most important Moldovan countries of destination including Russia and Italy (table 1).

**Table 1. The Moldovan economically active population living abroad by country of destination, thousand persons, 2006 and 2011**

Country of destination	2006	2011
<b>Total</b>	<b>310.1</b>	<b>316.9</b>
Russia	192.5	204.8
Italy	54.7	58.4
Turkey	12.4	7.4
Israel	3.4	6.4
Ukraine	8.3	5.1
Portugal	9.6	4.4
Greece	6.1	2.4
Romania	4.5	2.4
Other countries	18.6	25.6

Source: LFS - Moldova

During this process, some definitions arise. In the agreement on circular migration signed with Italy, it is stipulated that “for a period of time, no longer than 9 months, having a residence permit that cannot be renewed, the Moldovan seasonal worker can be employed by several employees” and “if the seasonal worker returns to Moldova when the residence permit expires, then that worker has priority when asking the permit for the next year”.

Therefore, on the basis of the above agreement, a circular migrant is a person who goes abroad, works legally there for no more than 9 months. He or she then returns to Moldova and has priority in returning to Italy again later on. A similar agreement is expected to be signed with the Russian government as well.

Unfortunately, available data cannot offer estimates for the number of circular migrants according to the above definition. Thus, this note will offer estimates based on a broader definition of IOM: “the fluid movement of people between countries, including temporary or long-term movement which may be beneficial to all involved, if occurring voluntarily and linked to the labour needs of countries of origin and destination.”<sup>2</sup>

It is important to note that the IOM definition says nothing about the legal status of labour migrants.

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<sup>1</sup> The economically active population includes all employed and unemployed people aged 15 years and over. Unemployed people include those who are not employed but who are actively looking for a job.

<sup>2</sup> IOM Key Migration Terms, available at <http://www.iom.int/jahia/Jahia/about-migration/key-migration-terms/lang/en>.

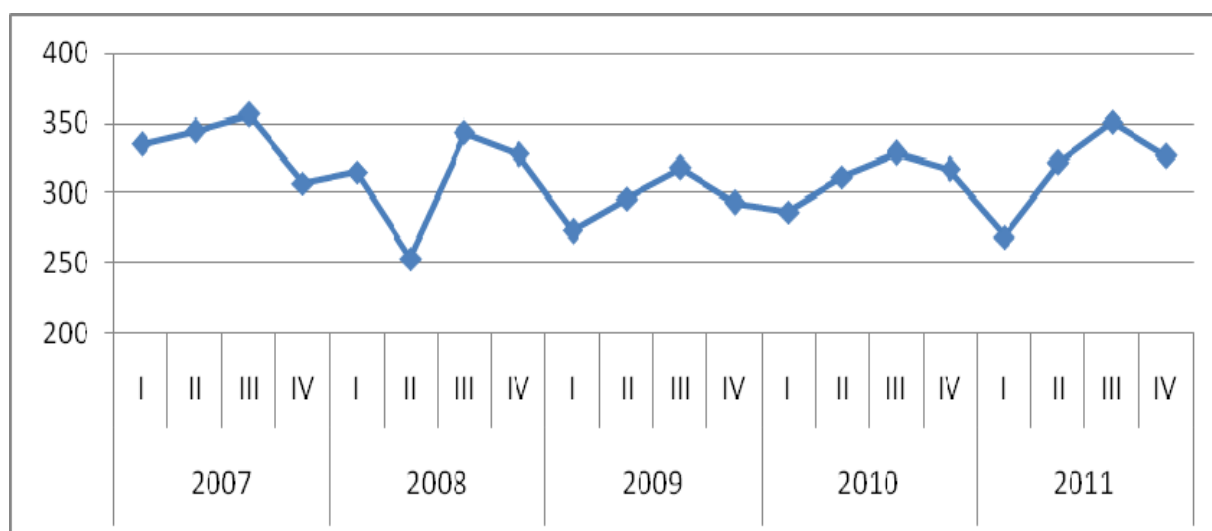
Travelling to Russia – where 63% of Moldovan labour migrants lived in 2010 – is not expensive and there is no need to have a visa to enter the country. Then, according to Russian law, Moldovan citizens can stay legally on the Russian territory for no more than three months and in some conditions for one year.<sup>3</sup> Therefore, all Moldovan labour migrants working in Russia are potentially circular ones, “fluid movement between Moldova and Russia” being affordable. Still, in real life things do not always follow the law. Migrants working in Russia talk about a service offered by employees of railway companies and border police. For a fee<sup>4</sup>, employees of railway companies take migrants’ passports and travel to Moldova and back, delivering them to their owners, with the necessary stamps. In this way migrants avoid exiting Russia every three months<sup>5</sup>, under the risk of losing their jobs (especially during a recession). Bribing police officers and agents of the Federal Migration Service is another way to avoid travelling home every three months. For Moldovans working in Italy access to “fluid movements” is more restrictive: travel costs are higher, plus many migrants stay there illegally. One important factor that has a big impact on promoting the circular migration of Moldovans working in the EU is that many of them regained Romanian citizenship, which allows them to travel freely.

## 2. Size of circular migration

LFS being a continuous, longitudinal, and representative survey, it is possible to obtain some estimates of how many Moldovan migrants are involved in circular migration.

Figure 1 indicates a clear seasonal trend in Moldovan labour emigration.

**Figure 1. Moldovan economically active population living abroad, thousand persons, 2007-2011 (quarter data)**



Source: LFS - Moldova

The easiest way to obtain an estimate of circular migrants is to calculate the difference between the stock of labour migrants in the third quarter (highest during the year) and the stock of labour migrants in the first quarter (the lowest). Following this formula about 43,000 migrants can be counted for 2010.

Unfortunately, this estimate has its limits. First, it does not account for the fact that the stock of migrants abroad includes “first-time migrants”, who should not be counted as circular migrants.

<sup>3</sup> Except for high-skilled workers, who can stay there for up to three years.

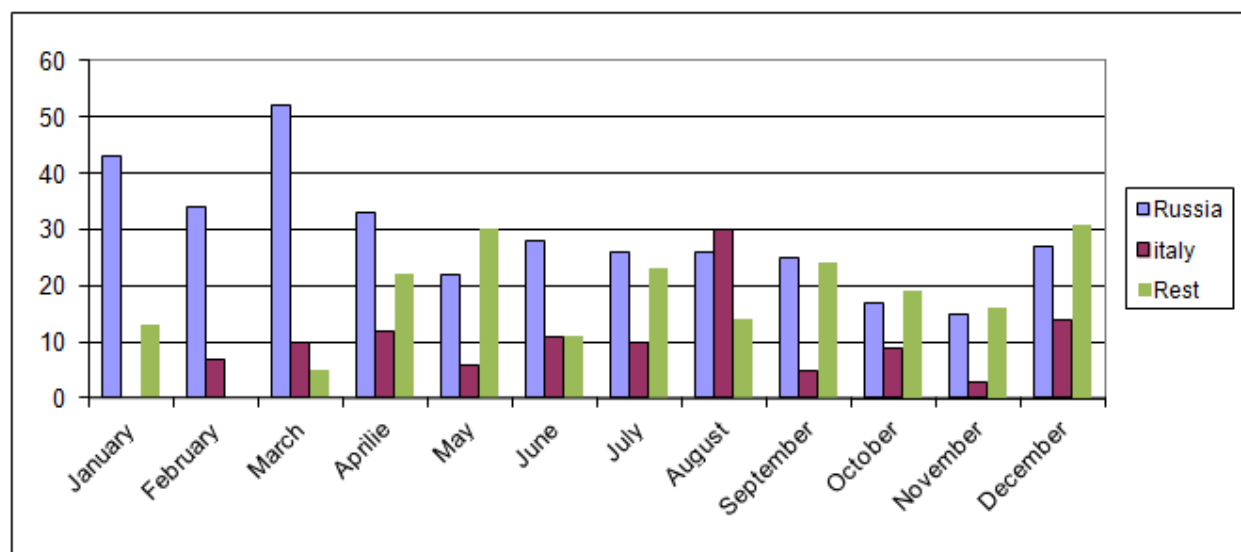
<sup>4</sup> About 4000 Russian rubles (125 USD).

<sup>5</sup> Except for cases when migrants have working permits for three months, that can be renewed up to three times.

Second, in terms of this approach, the number of circular migrants is underestimated as the stock number of migrants staying in Moldova (during short visits) is unknown.

Fortunately, the LFS rotation scheme helps overcome these problems. Using LFS data it is possible to see if a migrant returned to Moldova in three, nine or twelve months after first observation. According to these data, in 2010, the return rate<sup>6</sup> of Moldovan labour migrants was of about 13% after three months, 19% after nine months and 17% after twelve months, with different patterns according to country of destination. (figure 2).

**Figure 2. Moldovan economically active population's return rate (9 months after the first observation) by country of destination, values in %, 2010 (month data)**



Source: LFS - Moldova

Applying the highest return rate (19%) to the average numbers of labour migrants staying abroad by countries of destination in 2010, gives us: about 18,000 circular migrants in Italy, 101,000 in Russia and 21,000 in another 38 countries<sup>7</sup>. Therefore, there were about 140,000 Moldovan circular migrants in 2010.

As to Russia, we know that usually, Moldovan migrants return home by the end of autumn when many seasonal jobs begin to shut down or become difficult to carry out: construction, agriculture and street commerce. Plus, the autumn is the time when most celebrations take place in Moldova.<sup>8</sup> In addition, as in other post-Soviet states, the celebration of the New Year is very important; so many migrants return in December and stay in January, because of the Russian holidays.<sup>9</sup>

One specific group of circular migrants is that of students participating in Work & Travel programs in the US. They spend four months working abroad: end of May, beginning of September. Though, not all participating students are circular migrants because about 20% of them do not return and they choose to stay illegally in the US.<sup>10</sup>

<sup>6</sup> The return rate is the ratio between the number of return migrants and the average number of migrants living abroad at time t (\*100 individuals).

<sup>7</sup> Mainly Turkey, Ukraine and Romania.

<sup>8</sup> As Moldova has a strong agricultural tradition, the life-cycle is still strongly linked to the seasonal pattern.

<sup>9</sup> Usually, Russians have about two weeks of holidays in January.

<sup>10</sup> Source: US embassy in Chisinau.

### 3. Characteristics of Moldovan circular migrants<sup>11</sup>

It is difficult to say when a person becomes a migrant. It is well known that Moldovans search for work abroad because of the lack of well-paid jobs at home. There are two major groups of migrants: a) those who decide to migrate temporarily when big amounts of money are needed (for current or planned expenditures) and b) those who have plans to spend more time abroad and even settle there.

Migrants from the first group usually go to Russia for seasonal work and become circular migrants. Those from the second group mostly go to the EU and the US. They try to stay there as long as possible even illegally, working and trying to find a way to settle abroad<sup>12</sup>.

On average a circular migrant is aged 35 years: only about 20% are in the 15-24 year bracket. About 66% of circular migrants are men; the share of married migrants is also 66%. Almost 45% of circular migrants have secondary vocational education, 22% secondary lower, 17% secondary and 14% have higher education.

Circular migrants work abroad mainly as craft and related trade workers (46%) and unskilled workers (33%) in construction (58%) and the household sector (15%). About 12% work in the commerce as service, shop and market sales workers.

After returning to Moldova, in 2010, 40% of circular migrants were employed. Among them, 33% were working in commerce, 31% in agriculture, 19% in construction and 17% in public administration and education.

Most circular migrants employed after their return to Moldova were unskilled workers (65%) or qualified agricultural workers (19%) with an informal job (79%).

The main reasons why labour migrants return to Moldova are: vacation (23%), solving problems with documents (18%), family responsibilities (18%) and the end of the working contract/working permit (16%).

### 4. Conclusion and policy recommendations

Circular migration has both positive and negative consequences for Moldova. Circular migrants sent to Moldova 31%<sup>13</sup> of remittances in 2010. By searching for work abroad they reduce the unemployment among men from rural areas. Their constant movement between Moldova and the EU or Russia fuels the transportation sector. For example, the passenger flow through the Chisinau International Airport has increased 3.8 times over the last 10 years, Russia and Italy holding the main share as destinations<sup>14</sup>.

Experience gained abroad by circular migrants is an important factor that shapes the living habits of their family members, staying in Moldova. Almost all major Italian brands are present on the local market, from food to luxury products, imports from Italy increasing on average by 24% yearly, in the last 10 years.

There are programs for supporting returned migrants to start businesses in Moldova, investing their money and skills acquired abroad. For example, the “Pare 1+1” program<sup>15</sup> is addressed to migrants

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<sup>11</sup> Source: LFS-2008, 2<sup>nd</sup> quarter, <http://www.statistica.md/pageview.php?l=en&idc=350&id=2570>

<sup>12</sup> Regaining Romanian citizenship (for those in the EU) or migrating to Canada (for those in the US), for example.

<sup>13</sup> Based on the assumption that circular migrants, on average remit the same amount of money as the rest of migrants, an assumption supported by data of the Labour Migration Survey.

<sup>14</sup> Source: Chisinau International Airport, <http://www.airport.md/passenger-en/>.

<sup>15</sup> The name of the program refers to the idea that for each Leu of remittances invested by migrants, the Government will offer an additional Leu.



and their family members who would like to start/develop their business. The program informs migrants about its advantages, trains them and offers 50% of the money needed to start/develop a business. In 2011 the program assisted 73 projects, offering about 1.1 million USD. Unfortunately, the number of applications is still very low as migrants prefer to return abroad than starting an economic activity at home. Buying apartments or building houses is considered a more secure investment.

One major negative impact of circular migration is that many young people, family members of migrants, receiving remittances and/or having the possibility to work short-time abroad, do not want to work in Moldova because of low wages. This way, the local labour market does not make full use of the potential offered by young Moldovans. The social security system has not enough resources to cover all requests, including migrants' requests, particularly for those who apply for social assistance (e.g. pension) but who have not contributed.

Circular migration has also caused a shortage of skilled workers with secondary vocational education, though in the beginning it solved oversupply problems in this labour sector.

To conclude, circular migration solves some problems in reducing unemployment and poverty, supplying additional labour for seasonal work in Moldova. It reduces the social impact on families left home, but it also creates conditions for serious future structural misbalances.

The Moldovan Government undertakes efforts to make migrants keep their relations with Moldova. It even encourages them to return for good. But the differences in income levels between host countries and Moldova are too large, so these efforts do not have the desired effect.

Expectations are pessimistic. It is assumed that circular migrants will keep in contact with Moldova only while they have family members there. Moreover, integration policies developed in host-countries are expected to speed-up the process of breaking links with the home-country.

Last, but not least: the economic crisis makes circular migration more expensive. Travelling between Moldova and the host-country implies both financial costs and the risk of losing the job.

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**The Legal Framework  
for Circular Migration  
in Moldova**

**TATIANA CIUMAS**

*Legal Module*



## 1. International legal framework

### 1.1 Circular migration between MD and EU Members States

One of the main goals of the Joint Declaration on Mobility Partnerships between the European Union and the Republic of Moldova, signed 5 May 2008, was the facilitation of legal migration including circular and temporary migration, in particular for development purposes. In this regard circular migration schemes are viewed as a way to strengthen the capacity of Moldova to manage labor migration and to counteract illegal emigration. This kind of scheme will allow nationals to leave the country for a specific period of time and not to break off contacts with their country of origin.

A good example in this regard is the Agreement on Labor Migration and an Implementation Protocol thereof with the Government of Italy signed 5 July 2011<sup>1</sup> which provided for:

- development of circular migration schemes for Moldavian workers,
- joint technical assistance projects,
- implementation of common initiatives for Moldavian citizens staying in Italy,
- organization of vocational training and Italian language courses, offered by Italian institutions in the Republic of Moldova.

It is important to mention that Article 12 of the Agreement gives the same rights, protection and social security to migrants as to nationals. The present Agreement has an Implementing Protocol which defines the operational mechanisms especially relating to: technical assistance, training programs, circular migration schemes and seasonal work for citizens of the Republic of Moldova with a view to raising their qualifications and the reintegration of Moldovans who want to return<sup>2</sup>. Candidates from the Republic of Moldova who participate in training programmes can be included in a preferential list and will be able to obtain a preferential status when entering Italy with a view to perform labor activities in the domain of their training program<sup>3</sup>.

Under Agreement and Protocol both countries are willing to promote activities for the voluntary return of Moldovan citizens and the promotion of circular migration programmes for some categories of workers. Chapter III of the Protocol refers to “Circular migration” being regulated separately, the return in Paragraph 1 and seasonal work in Paragraph II. Thus according to Article 7 of the Protocol Italy will undertake measures for facilitating the return of Moldovan citizens through promoting circular migration programmes for certain categories of workers established by both parties. The Protocol establishes the period of time for seasonal work at a maximum of 9 months with a resident permit which cannot be renewed. It allows Moldovan citizens to work with several employers<sup>4</sup>. If the seasonal worker returns to his/her country of origin within the established terms after the expiry of the work permit, he/she will be given priority when applying for repeated entrance to Italy the year afterwards (Article 9). Thus the Agreement will allow both:

- the selection and maintenance of trained professionals in a specific domain, and
- continuity and maintenance of stable jobs for Moldovan nationals and Italian employers depending on qualifications and skills.

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<sup>1</sup> Agreement was approved by Government Decision No. 620 of 18.08.2011 (Monitorul Oficial; No. 139-145 of 26.08.2011).

<sup>2</sup> Article 1 of the Protocol.

<sup>3</sup> Article 5 of the Protocol.

<sup>4</sup> Article 8 of the Protocol.

Both the Agreement and the Protocol refer to the importance of informing the general public in Moldova and Italy about the provisions of the treaties. The implementation of this Agreement might serve as an example when negotiating with other EU countries. It will decrease illegal migration for the purposes of work and it will avoid the negative social impacts of migration including destroyed families and the need to permanently leave the country of origin. Fulfilling the provisions of the Agreement and its Protocol Moldova would become a trusted partner when negotiating labor migration agreements.

10 October 2010 the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas was signed in Brussels. The purpose of the document was to facilitate the issuance of visas to the citizens of the Republic of Moldova for an intended stay of no more than 90 days *per* period of 180 days. This Agreement refers more to temporary migration and the benefits of a person who acquires the visa, being motivated by a specific goal, like for example an official visit, participation in a conference etc. Labor migrants are not included in the present Agreement.

### *Agreements on Social Security*

The Republic of Moldova signed agreements in the social security/assistance domain and arrangements for their implementation with Austria, Bulgaria, the Czech Republic, Estonia, Luxembourg, Portugal and Romania. These agreements are based on the principles of:

- proportionality meaning that each contracting party will pay the pension for the period of contribution on their territory;
- export of benefits, meaning the right of the migrant worker to obtain benefits from the country where the activity was performed back in the country of domicile.

Taking into consideration that these agreements were signed with the main countries of destination (labor migration) they will have a positive impact on Moldovan migrants upon their future retirement.

## **1.2 Circular migration between MD and other post-Soviet states**

Agreements signed at the CIS level do not contain express definitions relating to circular migration. 15 April 1994 the Republic of Moldova signed, together with other CIS states, an Agreement on cooperation in the field of labor migration and social protection for migrant workers. This was a major step in the mid-1990s, and it created the basis for later bilateral agreements on labor migration issues. The Agreement states that labor activity is based on a contract presented to the employee prior to his/her departure (Article 6). The Agreement also provides for a situation where the labor migrant is obliged to return to his country of origin and when the labor contract cannot be transmitted from one employer to another (Article 6). The Agreement provides for a social protection for labor migrants, excluding pensions (Article 10), it also puts down the recognition of qualifications (Article 4) and forbids double taxation (Article 7).

Based on this agreement, Moldova signed bilateral agreements with four countries: Ukraine<sup>5</sup>, Azerbaijan<sup>6</sup>, the Russian Federation<sup>7</sup> and Belarus<sup>8</sup> which regulate labor activity and the social protection of citizens working abroad. Agreements signed with Belarus, the Russian Federation and Ukraine contain virtually the same provisions on: labor activity which is based on a contract and a work permit; potential restrictions regarding the employment of workers due to some changes in the

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<sup>5</sup> 13.12.1993.

<sup>6</sup> 21.04.2005.

<sup>7</sup> 27.05.1993.

<sup>8</sup> 05.05.1994.

situation of the national labor market; assurance of basic social rights and recognition of diplomas and a wide interpretation of assistance in cases of damages or even death of the worker. Additionally, the Agreement signed with Belarus contains a specific provision referring to the avoidance of discrimination in Article 2.<sup>9</sup>

At present a new agreement is under negotiation with the Russian Federation.

The Agreement signed with Azerbaijan in 2005 and ratified 15 December 2005<sup>10</sup> is a more progressive one. The agreement defines “working-migrant”, “family member”, “employer”, “detached worker”, and “intern” (Article 1). The working migrant is defined by four elements: he or she is permanently residing on the territory of one of the Parties; is staying legally on the territory; is performing a paid labor activity on the territory of another Party; and he or she is not a citizen of this state and is not permanently residing here. Article 5 obliges the Parties to respect and assure rights protection of working-migrants and their family members, and warns against any discrimination based on sex, age, race, language, ethnical or social origin, religious or political opinion, nationality, property and civil status, or, indeed, any other element (Article 5). Article 7 regulates the content of the contract which is more detailed than the previous ones including: information on employee/employer, type of work, work conditions, salary, working and resting times, living conditions, transportation costs, medical insurance, conflict solving, validity of the individual employment contract and conditions of its dissolution (Article 7). According to Article 7 the employer is obliged to hire only working-migrants with a work permit granted in accordance with the legislation in force for each country respectively. The Agreement sets out the rights and duties of the employee and employer. For example, Article 10 grants the right for the working-migrant to use the services provided by medical, cultural, sports and other institutions. Article 12 obliges the employer to assure that the working-migrant and his/her family members have good living conditions which correspond to sanitary requirements; unless otherwise stated in the individual employment contract.

These agreements can be considered as facilitating circular migration as they provide for the temporary employment of migrants on the territory of the signatory party. At the same time, this is unorganized employment, but it is spontaneous circular migration.

According to Article 14(3) of Law 200 foreigners shall be allowed to stay in the Republic of Moldova uninterruptedly or multiple times for no more than 90 days within 6 months after the date of their first entrance into the country based on international treaties or regulatory documents unilaterally canceling the visa regime. Moldova signed Agreements with Ukraine 18 May 2001, with the Russian Federation 30 November 2000 and an additional Protocol 7 March 2006, with Azerbaijan 26 October 2004 and with Belarus 24 December 2004, which allows an entrance without visa for citizens of Contracting States.

Although Moldova concluded agreements on labor migration with these four countries, Moldovan citizens also travel to other CIS countries based on the 90 days entrance regime: e.g. Armenia, Kazakhstan, Kirghizstan, Tajikistan and Uzbekistan, these countries are not main destinations of Moldovan citizens.

### *Agreements on Social Security*

The Republic of Moldova signed and ratified agreements on social security/assistance with the Russian Federation<sup>11</sup>, Ukraine<sup>12</sup>, Belarus<sup>13</sup>, Azerbaijan<sup>14</sup>, and Uzbekistan<sup>15</sup>. These agreements are

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<sup>9</sup>“In accordance with international treaties on human rights Parties are obliged to respect and assure the rights of all workers, employed based on a contract, and members of their families, without discrimination based on sex, race, language and political view, ethical or social origin, nationality, age, property, civil status or any other element.”

<sup>10</sup> Law no. 326 of 15.12.2005, published in Monitorul Oficial no. 1-4 of 06.01.2006.

<sup>11</sup> Signed on 10.02.1995, in force since 04.12.1995.

based on the principle of territoriality when establishing social benefits and they grant the same rights as for the citizens. Based on these agreements citizens of the Republic of Moldova and citizens of the mentioned states, as well as their family members, will receive pensions according to the legislation where they are permanently residing. It is important that these agreements also regulate the period when these states were part of the Soviet Union.

Moldova signed agreements with Belarus<sup>16</sup> and Ukraine<sup>17</sup> regulating the transfer and mutual payment of pensions. These provide that, in the case of the migration of a pensioner whose pension was established based on provisions absent in the legislation of the host country, the state which established the pension will continue to pay said pension until the right for pension in the host country is activated. Based on this provision in 2011 Moldova transferred payments in two cases.

### 1.3 Circular migration between MD and non-CIS(GE)/EU states

At the moment Moldova is negotiating an Agreement on labour migration with Israel.

## 2. National legal framework:

### 2.1 State policy

The policy promoted by the Republic of Moldova is reflected in the main national strategies, plans and programs which cover different strategic domain for the country. One of the main priorities of the National Strategy on Migration and Asylum (2011-2020)<sup>18</sup> is the efficient management of controlled migration. This involves a complex and meshed approach of emigration problems including the reintegration of migrants returned home and the immigration of foreigners, as well as mechanisms for efficient social integration of third-country nationals legally residing on the territory of the Republic of Moldova (Point 21). In order to accomplish this goal the Government set several objectives:

- Objective I. Promotion of a circular migration model maximizing the positive effects of migration for the person, host society and Moldovan community in its entirety.
- Objective II. Countering irregular emigration for the purpose of work by streamlining the promoted measures at the pre emigration, emigration and post emigration stages, and effective control measures of the activity of mediation agencies providing employment abroad.
- Objective III. Counteracting and reducing brain drain, emigration of young people, women, providing safeguards for children without parental care after parent's departure for work abroad under national programs for these categories of people.
- Objective IV. Maximize the positive effects of circular migration through the transfer of knowledge and new skills upon the return of migrants, diversification of possibilities and the facilitation of investment conditions for remittances in own businesses from the real sector of

(Contd.) \_\_\_\_\_

<sup>12</sup> Signed on 29.08.1995, in force since 19.11.1996.

<sup>13</sup> Signed on 12.09.1995, in force since 15.11.1996.

<sup>14</sup> Signed on 27.11.1997, in force since 08.01.1999.

<sup>15</sup> Signed on 30.03.1995, in force since 28.11.1995.

<sup>16</sup> Signed and entered into force on 22.08.2001.

<sup>17</sup> Signed and entered into force on 23.10.1998.

<sup>18</sup> Approved through Government Decision no. 655 of 08.09.2011 (published in Monitorul Oficial no. 152-155 of 16.09.2011) The National Strategy on Migration and Asylum (2011-2020) is the national document intended to ensure regulation of the movement and mobility of citizens, in order to contribute to the prosperity of the country's population, its social and economic development and the rights and social security of migrants.



the economy, stimulation of foundation of joint enterprises with the participation of migrants and support of patrons/employers from the host countries etc.

- Objective V. Capacity building of diplomatic missions abroad and consular posts in order to provide professional services to ensure social and economic rights for migrant workers, ensuring an effective dialogue with the community and the Moldovan Diaspora in the host country, while providing information and other assistance upon the return/repatriation of migrants in the country etc.
- Objective VI. Strengthen ties with diaspora and promotion of “social remittances” transfers- democracy, economy, culture, gender relations, organizational and community practices, contributing to the overall development process in the country.

26 December 2011 the Action Plan for the implementation of the Strategy for the period 2011-2015 was approved<sup>19</sup>. The plan sets specific objectives for each domain and necessary actions for their implementation, responsibilities being established for each public authority. As an example Objective 8 of the Plan sets promotion of circular migration model by:

- studying the best practices and capacity building of the responsible authorities in identifying the optimal model of circular migration;
- exploring possibilities for launching circular/seasonal migration initiatives and voluntary return with the main countries of destination;
- developing projects with a view to transfer knowledge and new skills upon the return of emigrants into the country;
- institutional capacity building with a view to elaborate, negotiate and accomplish circular migration programs and the reintegration of work migrants.

## 2.2 Freedom of movement for MD citizens

The Republic of Moldova’s Constitution, 29 July 1994, states in Article 18 that citizens enjoy the protection of their State both at home and abroad<sup>20</sup>. Article 27 of the Constitution states that every citizen of the Republic of Moldova is guaranteed the right to choose his or her place of residence anywhere within the national territory, to leave, to emigrate and to return to the country.

The legislation in force does not establish any timeframes for citizens to leave the country. The only precondition is the possession of proper documentation. According to Art. 1 of the Law on exit and entry to the Republic of Moldova, citizens of the Republic of Moldova have the right to exit and enter the Republic of Moldova based on their passports, and stateless persons, refugees and beneficiaries of humanitarian protection can do the same based on their travel documents. From 15 May 2012 citizens of the Republic of Moldova, regardless of their domicile or residence, have the right to enter the Republic of Moldova based on a travel authorization issued by the diplomatic missions or consular posts of the Republic of Moldova: this is true also for stateless persons and foreign citizens with permanent resident rights in the Republic of Moldova who are abroad and who have no valid travel documents for returning to the Republic of Moldova<sup>21</sup>. At the same time Art. 8 of the law sets out the conditions when issuance or prolongation of a new passport or travel document is refused, mainly referring to national security, public order or possession of some debts towards the state.

The new Law on the border of the Republic of Moldova of 11 April 2011<sup>22</sup>, which partially transposed the European *acquis* in this domain, entered into force 1 July 2012. Article 15 states that

<sup>19</sup> Government Decision no. 1009 of 26.12.2011, published in Monitorul Oficial no. 1-6 of 06.01.2012.

<sup>20</sup> Published in Monitorul Oficial No. 1, art No.: 1, 18 August 1994.

<sup>21</sup> Article 1<sup>1</sup> Law on exit and entry in the Republic of Moldova.

<sup>22</sup> Published in Monitorul Oficial no. 76-80 of 20.04.2012.

authorization for crossing the state border consists of the recognition of lawfulness regarding crossing the state border, and the grounds for authorization represents valid travel documents provided for by the legislation in force. Art. 22 regulates the situation where a person has no documents for crossing the state border, even if he/she declares themselves to be a citizen of the Republic of Moldova.

Though legislation proclaims freedom of movement the Law on labor migration of 10 July 2008<sup>23</sup> sets restrictions for the emigrations of citizens abroad in Article 23 referring to:

- a court decision in a criminal case;
- a court decision regarding debts towards the state or natural/legal persons;
- presentation of a confirmation document regarding evidence of minors who remain in the country, issued by the competent body for child protection from the domicile region/district of parents;
- other cases provided for by the law.

### 2.3 Citizenship

If an individual receives citizenship of the Republic of Moldova, the Constitution and the Law on citizenship of the Republic of Moldova states that plurality of citizenship is allowed.<sup>24</sup> As for citizens of the Republic of Moldova who possess the citizenship of another state, in relations with the Republic of Moldova they are recognized only as its citizens except for specific cases provided for by legislation.<sup>25</sup>

The Law on the regime for foreigners sets more favorable conditions for some categories of persons. Thus, according to Article 43(1) of the Law on the regime for foreigners, temporary residence rights may be granted or extended to foreigners who are entitled to acquire the citizenship of the Republic of Moldova through recognition or re-acquisition. Moreover, a permanent residence right shall be granted to foreigners who are entitled to restore their Moldovan citizenship through recognition and who meet the following requirements:

- They possess a living space;
- They speak the official language to a satisfactory level;
- They have had no criminal record in the last 3 years.<sup>26</sup>

The language element is very important and without sufficient knowledge, the person will be able to apply only for a temporary resident permit.

At the same time, Law no. 200 grants the repatriation right to individuals born in the Republic of Moldova who, for certain reasons, did not receive the citizenship of the Republic of Moldova. It also grants citizenship to their descendants regardless of their place of residence. These persons are entitled to confirmation of repatriation from the competent authorities for foreigners and based on this confirmation they can receive permanent residence permits on the territory of the Republic of Moldova or an ID card for stateless persons (Article 87).

### 2.4 Regularity of back-and-forth movement of foreign citizens

Holders of temporary/permanent resident rights cannot be subject to any restrictions regarding their freedom of movement during the validity of their permit. According to Art. 6(5) of the Law on the

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<sup>23</sup> Published in Monitorul Oficial no. 162-164 of 29.08.2008, in force since 01.01.2009.

<sup>24</sup> Art. 24 of the Law on Citizenship.

<sup>25</sup> Art. 24(4) of the Law on Citizenship.

<sup>26</sup> Art. 45 of the Law on the Regime for Foreigners.

regime for foreigners in the Republic of Moldova<sup>27</sup>, “Foreigners who domicile in the Republic of Moldova on legal grounds and temporarily leave its territory are entitled to reenter the country without an exit/entry visa during the whole validity period of their resident permit”. Thus, as in the case of citizens, their return is conditioned by the validity of the document which allows staying for a specific purpose. For example, in the case of beneficiaries of a form of protection in Moldova, they are entitled to enter to the country by presenting the ID which proves their status. The Law on asylum in the Republic of Moldova gives two different situations for refugees and beneficiaries of humanitarian protection. For a recognized refugee, holding an ID valid for five years<sup>28</sup> there is no restriction of movement within this period of time. In case of a beneficiary of humanitarian protection his/her situation is limited to ID validity for one year<sup>29</sup>.

The foreigner shall not be allowed to leave the country if he is part of a criminal case or was convicted based on a final court judgment (Article 12(2) of the Law on the regime for foreigners).

## 2.5 Stability and flexibility of residence

The Law on the regime for foreigners in the Republic of Moldova<sup>30</sup> states in Article 4 that foreigners legally residing in the Republic of Moldova enjoy the same rights and freedoms as citizens, with the exceptions established by the legislation in force.

The general rules set in the Law on the regime for foreigners is that foreigners who stay on the territory of the Republic of Moldova must follow the purpose for which they have been granted the right of entry into and the residence right in the country, as applicable. Likewise, they must leave the territory of the Republic of Moldova upon the expiration of the granted period of residence (Article 4(5)). The validity of a temporary residence permit is limited to the period for which the holder’s right of temporary residence in the Republic of Moldova was granted or extended (Article 74(1)). Holders of temporary residence rights who leave the country upon expiration of their residence permit and who want to return to Moldova, will have to pass through the standard procedure established by the Law for each category of immigrant.

The Law on foreigners provides for the cessation of the permanent residence right in case the foreigner has been absent from the territory of the Republic of Moldova for more than twelve consecutive months (Article 45(7)(c)). In this case the foreigner may submit a new application for receiving the rights of permanent residence in the Republic of Moldova after a legal twelve month temporary stay.

## Conclusion

With a view to obtaining the liberalization of the visa regime with the EU the Republic of Moldova is willing to assume new obligations, This willingness goes beyond merely rhetorical points and includes the readiness to take concrete steps in national documents. An example in this respect is the National Strategy on Migration and Asylum which is the basis for future steps for the central public authorities in migration management, and where the promotion of the circular migration is included:

In the Moldovan context circular migration should be seen as a way for:

- development
- stopping illegal emigration trends

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<sup>27</sup> Law of 16.07.2010, published in Monitorul Oficial no. 179-181 of 24.09.2010, in force since 24.12.2010.

<sup>28</sup> Article 36 of the Law no. 270 of 18 December 2008.

<sup>29</sup> Article 37 of the Law no. 270 of 18 December 2008.

<sup>30</sup> Law of 16.07.2010, published in Monitorul Oficial no. 179-181 of 24.09.2010, in force since 24.12.2010.

- regulating relations between destination countries by seeking out benefits for both parties
- directing remittances by reducing their use in daily consumption and prioritizing their investment
- social protection and security of nationals
- granting a bigger role to the diaspora and its inclusion in the state's activities relating to migration.

At the moment the legislation in force is limited to granting the right to stay for foreigners who enter the country and determines maintenance of this right based on the validity of a resident permit. When re-entering the country and/or re-applying for a residency right the authorities will check if the person fulfills the conditions for granting the respective right rather than the benefit for the country.

For the Republic of Moldova circular migration, even as a concept, is something new and unexplored. Besides the Agreement and Protocol signed with Italy other bilateral agreements have a rather limited content, concentrating more on social aspects. At the same time the implementation of the Italian Agreement, based on circular migration schemes, is a challenge for the authorities. After all, the population who wanted to emigrate from Moldova is already settled out of the country or does not want to return.

For the Republic of Moldova circular migration is a perspective for “keeping” nationals in the country and for avoiding the negative impact of emigration and a way for stimulating nationals to invest in the country.

**Circular Migration  
of the Population of the  
Republic of Moldova**

**VALERIU MOSNEAGA**

*Socio-Political Module*



*Mass labor migration of the Moldovan population aggravated the labor market situation, and is threatening the social-economic and demographic development of the country. In these conditions the problem of circularity in migration processes becomes particularly relevant.*

*Circular nature of Moldovan migration is quite specific due to the fact that the Republic of Moldova, its population in migration processes, tends to integrate in large regional migration systems - Commonwealth of Independent States and European Union.*

*The specific nature of Moldovan circular migration to the CIS and EU is determined by two criteria: vector (direction) of migration and nature of employment in destination countries. According to the results of public opinion poll, mainly people from the villages participate in circular migration to the CIS; heads of households, men with secondary or vocational education. For them labor migration abroad is a secondary form of employment, and it is seasonal. Circular migrants to the other countries are predominantly women, and a great share of them have higher education. There are significant differences which determine circular nature of migration, especially in the impact of push and pull factors. Labor migration to the CIS countries is determined to a greater extent by the migrants' and their households' need to survive, while migration to the EU countries is conditioned by the greater living (functioning) opportunities for migrants and their families.*

*Visa regime, high travel expenses have a significant impact on the nature of circular migration to the EU. It explains greater length of trips. Work trip to the CIS (mainly to Russia) usually lasts around 7 months, while in the EU it's twice longer, 15 months. Quite often it stimulates non-return migration.*

*In the conditions of modern financial and economic crisis of 2008-2010 circular migration acquired several new features. These include delayed nature of migration, greater comparable choice possibilities in terms of destination countries and countries of origin, uncertainty and mass multiple choices of its implementation.*

*Moldovan authorities undertake certain steps aimed at consolidation of circular labor migration. We shall point out some of them: - pilot participation of Moldova (along with African state Cape Verde) in mobility and circular migration strategy (since 2008) implemented in the framework of more than 70 projects; - implementation of visa free regime with EU countries (Action Plan Republic of Moldova-EU on visa liberalization, March 2011), - engaging Moldovan labor migrants in modernization and social-economic development of the country (Pilot program on attracting remittances of the labor migrants in the economy "PARE 1+1", 2010-2012, State program for support of small and medium business (2009-2011), etc.*

*We define circular migration as temporary stay of permanent residents of the country of origin in receiving country for employment or humanitarian purposes (education, professional training, volunteer work, etc.). Circular character of migration suggests that the migrant has to return home from the country of temporary stay upon the achievement of his/her purposes<sup>1</sup>.*

## **Moldovan Circular Migration: Current Situation and Specifics**

The population of the Republic of Moldova massively takes an active part in labor migration. According to the World Bank data over 700 thousand people participate in labor migration, which is in fact every second employable citizen of Moldova<sup>2</sup>. It leads to less favorable situation in the labor market and threatens the demographic security of the country.

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<sup>1</sup> The objective of this article is to consider circular *labor* migration of Moldovan population.

<sup>2</sup> Moldova after the global crisis: promoting competitiveness and shed growth". April 4, 2011. World Bank, c.60

In such conditions it is quite understandable that Moldovan authorities strive to minimize the negative consequences of mass labor emigration of Moldovan population abroad, attempting to return labor migrants back home, at least to turn labor emigration into labor circular migration.

According to the national opinion poll in the Republic of Moldova labor migration of Moldovan population nowadays is mostly circular. However, this circular nature of Moldovan international labor migration is not evident enough.

Examining labor migration processes in the context of such criteria as: a) inclusion of the country in large modern migration systems (Commonwealth of Independent States and European Union); b) social-demographic image of modern Moldovan labor migrant, nature of his/her employment abroad, allows us to uncover the specifics of circular migration of the Moldovan population<sup>3</sup>.

Based on the nature of employment and region where labor resources are applied, there are the following groups distinguished by social-economic characteristics, destination and money transfer model. In the CIS (mainly Russia) two major groups can be identified: construction workers and others (mostly sales, transportation, agricultural, industrial, mining workers, etc.). In the EU primary areas of occupation are service sector, taking care of old and/or sick people, children, international truck driving, constructions. In other countries (Turkey, Israel, USA...) - housekeeping, taking care of old and/or sick people or children, constructions, service sector<sup>4</sup>. Each of these groups is quite numerous and important for understanding the nature and specifics of circular migration in the Republic of Moldova.

**Table 1. Number of Moldovan Labor Migrants Abroad by Major Groups (2006), thousand people<sup>5</sup>**

<i>Group</i>	<i>Number of People</i>	<i>%</i>
CIS - construction workers	103.837	34
CIS - others	74.030	24
European Union	94.476	30
Others	37.730	12

Differences between these groups are easily distinguishable in the context of push and pull factors of labor migration. Comparing the impact of push and pull factors of international labor migration we would like to note that the "CIS" groups include poorer and more marginal migrants than the "EU" group. The respondents answer quite eloquently about this (no jobs, poverty).

This fact is also confirmed by the answers of the respondents about the pull factors affecting the choice of destination country. Migrants going to the EU and other countries of the world are mostly guided by the societal factors: the destination country was recommended by a person they asked for advice; there are social contacts (capital); good working conditions; guaranteed job. While for labor migrants to the CIS (mainly to Russia) material and financial factors determine their decision, the cost of the trip is attractive. Quite often it is the decisive factor that makes them choose Russia and Ukraine for employment, as trips there are incomparably cheaper than to the EU countries. That is, labor migration to CIS countries is determined to a greater extent by the migrants' and their household

<sup>3</sup> Lucke M., Mahmoud T.O., Pinger P. Migration and Remittances in Moldova. – Chisinau, IOM, 2007, p.26.

<sup>4</sup> Moraru V., Mosneaga V., Rusnac Gh. Mayatnik Migratsii ("Pendulum of Migration"). - Chisinau: Printing house Sirius, 2012, p.40-47

<sup>5</sup> Lucke M., Mahmoud T.O., Pinger P. Migration and Remittances in Moldova. – Chisinau, IOM, 2007, p.26.



members' need to survive, while migration to the EU countries is conditioned by greater living (functioning) possibilities for migrants and their families.

**Table 2. Push And Pull Factors Stimulating International Labor Migration  
(public opinion poll CBS AXA)<sup>6</sup>**

	<i>CIS - construction</i>	<i>CIS - others</i>	<i>EU</i>	<i>Other</i>	<i>Average</i>
<i>Push Factors</i>					
No job	38,61	37,72	26,43	33,01	34,27
Consumer reasons (living standards)	49,62	50,17	46,56	32,90	46,78
Poverty	24,87	24,30	12,69	20,68	20,51
<i>Pull Factors</i>					
Availability of social contacts (capital)	22,48	20,83	31,90	50,97	27,54
Guaranteed job	33,97	33,91	38,57	42,18	36,06
Good working conditions	29,90	32,52	44,72	25,36	34,21
Destination country was recommended by a person they asked for advice	36,20	35,51	51,55	43,21	40,86
Quality of life is better abroad	0,63	4,65	5,89	2,21	3,36
Low cost of the trip	66,66	68,96	14,18	27,64	49,10

While Moldovan labor migrants can go to Russia and Ukraine without any difficulties, benefitting from the visa free regime and spending money only on their tickets, they do need visas to go to the European Union countries, and applying for/receiving one requires additional financial expenses. At that, unofficial cost (receiving visa urgently, often through corrupt schemes) can differ significantly from the official cost of visa.

Certainly, Moldovan labor migrants also resort to illegal crossing of the state borders of EU countries. We would like to mention, that illegal crossing of the border in the "green zone", traveling to the destination country with fake documents has never been the primary way of Moldovan labor migration<sup>7</sup>. In the conditions of enhanced border control between the European Union and neighboring countries, illegal migration flows went down significantly; people tend to look for more acceptable and secure ways of labor migration. Recently such ways include receiving citizenship of EU countries (Romania, Bulgaria, other countries), tourist visas, labor contracts, family-based immigration, etc. According to the research data, the total cost of trip to the European Union countries varies (depending on the country) from 2,500 to 4,500 euro<sup>8</sup>.

We examine the cost of traveling abroad for temporary employment, comparing the financial cost for the first trip by major groups of migrants in the table below. We emphasize that currently there is a decrease in the cost of travel to EU countries and other regions. This is due to enhanced means of transportation and greater possibilities, as well as greater competition between transportation companies.

<sup>6</sup> Lucke M., Mahmoud T.O., Pinger P. Migration and Remittances in Moldova. – Chisinau, IOM, 2007, p.27.

<sup>7</sup> Moraru V., Mosneaga V., Rusnac Gh. Mayatnik Migratsii ("Pendulum of Migration"). - Chisinau: Printing house Sirius, 2012, p.36-38

<sup>8</sup> Mosneaga V., Rusnac Gh. My stroim Evropu i ne tol'ko... ("We build Europe, and not only...") - Chisinau, Moldovan State University, 2005, p. 14

**Table 3. Labor Migrants' Expenses for the First Trip Abroad (in US dollars), opinion poll CBS AXA, 2006<sup>9</sup>.**

	<i>CIS - construction</i>	<i>CIS other</i>	<i>EU</i>	<i>Other</i>	<i>Average</i>
2000	74	132	3.584	880	654
2006	171	170	2.051	285	540

Difficult access, high cost of travel, visa regime with EU countries maximize the material, financial, physical, and moral psychological value of presence in the receiving country, thus affecting significantly the circularity of labor migration: duration and seasonality of one's stay, labor migrant's willingness to stay in the destination country permanently.

**Table 4. Structure of Migrant Groups and Length of Stay abroad (public opinion poll CBS AXA, 2006)<sup>10</sup>**

	<i>CIS - construction</i>	<i>CIS - others</i>	<i>EU</i>	<i>Other</i>	<i>Average</i>
Seasonal workers (%)	74,90	59,18	18,39	48,17	51,78
Duration (months)	5,22	7,22	15,5	9,06	8,31
To stay permanently (%)	6,66	12,99	23,30	20,60	14.35

In the CIS most of the labor migrants are seasonal workers who are employed abroad for about 6-7 months a year, while in the EU only every fifth labor migrant is a seasonal worker (see table 4). Their length of stay also differs significantly - over 15 months. In fact, this is a labor emigrant. This is also supported by the intention to stay in the destination country permanently. This number among migrants to the EU is 2.5 times higher than among migrants to the CIS. We emphasize that this refers only to the respondents who *expressly* stated they were intending to stay permanently in the destination country. Most of the migrants do not hurry to come back and condition their return on a number of considerable requirements towards the Moldovan authorities which the latter are unable to fulfill.

Comparing social demographic characteristics of labor migrants one can also note important differences between the listed groups of labor migrants. In particular this applies to the group "CIS - construction workers" which includes predominantly men from villages, with secondary or vocational education, heads of households<sup>11</sup>. At the same time women are predominant in the other groups.

<sup>9</sup> Lucke M., Mahmoud T.O., Pinger P. Migration and Remittances in Moldova. – Chisinau, IOM, 2007, p.36

<sup>10</sup> Lucke M., Mahmoud T.O., Pinger P. Migration and Remittances in Moldova. – Chisinau, IOM, 2007, p.35

<sup>11</sup> Mosneaga V., Turcan V., Rusnac Gh. Moldavskiye stroiteli v Rossii: problemy tolerantnosti i integratsii (comparativistskiy analiz po rezul'tatam sotsiologicheskikh issledovaniy). ("Moldovan construction workers in Russia: problems of tolerance and integration (comparative analysis based on opinion poll results). // MOLDOSCOPIE (Probleme de analiză politică). Partea 1 (Political Analysis Issues. Part 1 (XXXVIII), 2005. - Chişinău: CEP USM, 2005, p.69-109

**Table 5. Social Demographic Characteristics of Migrants<sup>12</sup>, per cent  
(public opinion poll CBS AXA, 2006).**

	<i>CIS - construction</i>	<i>CIS - other</i>	<i>EU</i>	<i>Other</i>	<i>Average</i>
<i>Average age</i>	34.43	34.83	35.39	32.33	34.56
Under 30	36.77	35.39	34.20	50.58	37.34
30-50	53.90	55.50	57.02	38.93	53.41
Over 50	9.33	9.11	8.78	10.49	9.25
<i>Female</i>	15.51	46.13	58.53	67.75	41.62
<i>Education</i>					
Primary	5.46	4.93	2.57	17.52	5.32
Secondary	48.68	35.58	31.35	33.58	38.45
Vocational	36.75	36.37	35.37	32.83	35.76
Higher	7.96	22.39	28.86	19.23	19.12
<i>From villages</i>	76.30	66.28	56.46	51.31	64.82

Circular nature of migration is also affected by the labor migrant's status in the receiving country. Illegal arrival, stay, and employment in the receiving country has a negative impact on migration circularity. Realizing that he/she will not have another possibility to return to the receiving country in case of deportation, the migrant will do his/her best to stay/work abroad as long as possible, will seek ways to change one's illegal status into a legal one.

**Table 6. Illegal Migration, Stay, and Employment in the Receiving Country, per cent  
(public opinion poll CBS AXA, 2006)<sup>13</sup>.**

<i>Illegal Stay</i>	<i>CIS - construction</i>	<i>CIS - other</i>	<i>EU</i>	<i>Other</i>	<i>Average</i>
Migration (arrival)	21 <sup>14</sup>	14	43	27	26
Stay (presence)	33	23	47	41	35
Employment (work)	42	22	38	44	35

Global financial and economic crisis in 2008-2010 aggravated the problem of labor migration and return of Moldovan labor migrants from the receiving country. According to the research results<sup>15</sup> there is no direct linear relation between the departure from the receiving country and return home. Migrants demonstrate various individual departure / survival strategies in the conditions of the crisis.

<sup>12</sup> Lucke M., Mahmoud T.O., Pinger P. Migration and Remittances in Moldova. – Chisinau, IOM, 2007, p.28

<sup>13</sup> Lucke M., Mahmoud T.O., Pinger P. Migration and Remittances in Moldova. – Chisinau, IOM, 2007, p.33

<sup>14</sup> Such a high percentage of illegal labor migrants (in the "CIS" group) is highly doubtful in the context of "illegal migration (arrival)" to the CIS countries, given that Moldova has visa-free regime with these countries. We suppose that to a greater extent this applies to "stay/presence" than to "migration/arrival" to the receiving country.

<sup>15</sup> Moraru V., Mosneaga V., Rusnac Gh. Mayatnik Migratsii ("Pendulum of Migration"). - Chisinau: Printing house Sirius, 2012, p.159-181

Such strategies also affected the circularity of labor migration, adjusted it in a certain way, and uncovered its specifics in the conditions of the crisis. Firstly, circular labor migration became more of *delayed* nature, due to growing uncertainty about one's employment, decreased income of labor migrants in the receiving country. Secondly, as a result of the crisis, *more comparable opportunities* arise in the receiving countries, making possible a choice between the country of origin and destination country. Thirdly, labor migration circularity became more obviously *multi-optional in mass*. Migrants face a choice: whether to stay in the receiving country, or to return to the country of origin, or to seek another receiving country, or to stay in the borderline situation "in two places simultaneously". At that, it is noteworthy that migrants consider that in the receiving countries the crisis will be overcome faster and more seamlessly than at home in Moldova. That is why they do their best to retain the possibility to return to the receiving country, maintaining the old scheme of circular migration.

### **Moldovan policy on Circular Migration**

In spite of the fact that circular migration is not viewed as a separate priority in the National strategy for Migration and Asylum 2011 - 2020<sup>16</sup>, currently the authorities of the Republic of Moldova undertake certain steps for consolidation of the labor migration circularity. We emphasize that there are no discussions in the Moldovan society regarding labor migration circularity. All the political and social parties in Moldova realize the negative consequences of mass labor migration for the sustainable social-economic development of the country.

Undoubtedly, the main conditions for decreasing the numbers of labor migration and for implementation of its circular nature include approval and effective functioning of pluralistic democracy principles, sustainable social and economic development of the country, higher standards of living, social and legal protection for the population. In the conditions when Moldova is the poorest country in Europe one cannot realistically expect these problems to be resolved quickly.

Moldova expressed its will to participate as a country in the pilot project on circular migration, presented several proposals and remarks for improvement of circular migration mechanism and mobility. In June 2008 the Republic of Moldova was selected (along with the African state Cape Verde) to implement the project on circular migration. In the framework of this agreement it was presumed to implement two projects (beginning in autumn 2008), with the total value of 5.5 million euro. Overall currently there are over 70 projects in this field<sup>17</sup>.

The main objective in the framework of the mobility and circular migration strategy is to minimize the negative consequences of labor migration of Moldovan population abroad. 70-80 employment service offices were opened domestically in 2010 in the framework of mobility and circular migration project, and 3 employment service offices were opened abroad (Padua, Berlin, Milan), their purpose being to inform the Moldovan labor migrants and their relatives, family members about employment possibilities, as well as possibility to return to Moldova. Note that 250 labor migrants returned home, and 450 persons opened their own business in the Republic of Moldova<sup>18</sup>.

Generally speaking, so far implementation of this project has not yielded the expected effect for several reasons. Firstly, the beginning of the project coincided with the global financial economic crisis

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<sup>16</sup> Hotărârea Guvernului Nr. 1009 din 26.12.2011 "Cu privire la aprobarea Planului de acțiuni pentru anii 2011-2015 privind implementarea Strategiei naționale în domeniul migrației și azilului (2011-2020)" (publicat: 06.01.2012 în Monitorul Oficial Nr. 1-6).

<sup>17</sup> Buracec E. Moldova: Sozdat' uslovie dlea vozvrasheniya migrantov domoy. // Migratsiya XXI vek (Moldova: Creating conditions for migrants to return home. // Migration XXI century), #2 (11), March - April 2012, p.12-14

<sup>18</sup> Moraru V., Mosneaga V., Rusnac Gh. Mayatnik Migratsii ("Pendulum of Migration"). - Chisinau: Printing house Sirius, 2012, p.81-82

(2009 - 2010), making therefore EU countries less interested in it. Secondly, Moldovan authorities lack experience in implementation of such policies. They are just at the beginning of their way, accumulating experience, working out implementation mechanisms. Thirdly, and in our opinion this is the main reason, - the mobility strategy as labor market phenomenon is based on social and economic differences between the countries. However, in our case, compared to the European Union, it is based not only on social and economic differences. When people leave, indeed, in most of the cases they do it for social and economic reasons, but when they decide whether to return back home to Moldova, the societal factors have a priority (development and efficiency of democratic principles, standards of living and quality of life, ecologic, social and welfare conditions, etc). In the conditions of public transformations the labor market is also at development stage. Thus, nowadays it is quite difficult to establish actual needs of the country, as well as demand segments of the labor market, their potential.

Still, certain activities in several directions continue to be implemented. Thus, since January 2012 financial incentives are foreseen for the graduates of EU universities who return back home and are employed here.

Creating conditions for small business development, Moldovan authorities thus try to attract Moldovan labor migrants, their capital and potential for modernization and social-economic development of the country as a whole, and different specific locations in particular. Different projects are implemented for this purpose, one of them being the Pilot program on attracting remittances of Moldovan labor migrants in the economy "PARE 1+1" 2010-2012, State program to support the development of small and medium business (2009-2011)<sup>19</sup>.

Visa-free regime with European Union countries. Moldovan authorities base their judgment on the fact that existent visa regime is one of the factors preventing the migrants from coming back home. National program on implementation of EU-Moldova action plan on visa liberalization was elaborated and signed in March 2011. It is noteworthy that monitoring European structures noted a number of significant positive changes related to border security, introduction of biometric passports in Moldova, and others.<sup>20</sup>

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<sup>19</sup> Svetlicinii R. Experiența internațională și practicile implementate în Republica Moldova privind strategiile de reîntoarcere și reintegrare a migranților de muncă. // MOLDOSCOPIE (Probleme de analiză politică). ("International experience and practice implemented in the Republic of Moldova on strategies of return and re-integration of labor migrants. // MOLDOSCOPIE Political Analysis Issues) – #2 (LVII), 2012. - Chisinau: AMSP, 2012

<sup>20</sup> Moraru V., Mosneaga V., Rusnac Gh. Mayatnik Migratsii ("Pendulum of Migration"). - Chisinau: Printing house Sirius, 2012, p.86-88.

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**The Demographic and Economic  
Framework of Circular Migration  
in Ukraine**

**OLEKSI POZNIAK**

*Demographic and Economic Module*





## Introduction and definitions

In the global population and workforce exchange system Ukraine acts primarily as a donor country. According to the estimates of the M.V. Ptukha Institute for Demography and Social Studies, Ukrainian National Academy of Sciences (hereafter IDSS), in 2008 the total number of Ukrainian labor migrants were 2,120,000 people (IOM, 2011). This estimate of the number of labor migrants relies on the Modular Population Survey of Labour Migration Issues from 2008<sup>1</sup> (hereafter the 2008 survey), carried out by the State Statistics Service of Ukraine (Ukrainian Center of Social Reform and Ukrainian State Statistics Committee, 2009). However, it also takes into account the stocks of labor migrants not covered by this survey, namely: persons who started to work abroad more than 3.5 years before the survey and who have not returned to Ukraine since then; migrants older than employable age (men 60 years old and senior, women 55 years old and senior); and border commuters (Pozniak, 2012).

The main destination countries for labor emigrants from Ukraine are Russia (around 40%), Italy (almost a quarter), Poland, the Czech Republic, Portugal, Spain and Hungary. In total over half of all Ukrainian labor migrants work in the European Union.

In this explanatory note circular migrants are understood as those who made one or more labor trips abroad and returns. There are two types of circular migrants. Migrants who made only one roundtrip between the places of origin and destination are described as “return migrants” (Newland, 2009) and migrants who made more than one trip are defined as “pure circular migrants”.

## Size and characteristics of circular migration from (and to) Ukraine

A significant share of external labor migration in Ukraine is circular. According to the 2008 survey, from early 2005 to mid-2008 a migrant on average made 3.4 trips abroad to work, and the average duration of a labor trip was around 7 months<sup>2</sup>. Among migrants who indicated the number of trips: only 35.5% went to work abroad once; 47.5% went abroad from two to five times; 15.5% from six to ten times; and 1.5% more than ten times. Among migrants covered by the 2008 survey almost all have experienced circular migration. Of 1,476,100 labor migrants identified by the survey 692,300 (46.9%) were in Ukraine at the time of survey; that is to say that they had returned at least temporarily. About 207,000 persons are return migrants (they made one roundtrip) and the rest 485,300 are pure circular migrants. Of the remaining 783,800 (who were not in Ukraine at the time of the survey) over 600,000 went to work abroad more than once: that is to say that they returned at least once to Ukraine after having worked overseas.

Migrants who are not covered by the 2008 survey (645,000 according to estimates of the IDSS) include: border commuters, 138,000 all assumed to be pure circular migrants; short- and middle-term migrants older than employable age, 139,500 too are assumed to be pure circular migrants; long-term migrants older than employable age, 35,500; and long-term migrants of employable age, 332,000.

In general, provided that all long-term migrants not covered by the 2008 survey are not circular migrants, the total number of Ukrainian citizens having experience of circular migration can be estimated at 1,570,000. In other terms this means almost three quarters of the total stock of external Ukrainian labor migrants. 1,360,000, or almost two thirds of the total stock of external Ukrainian labor migrants are pure circular migrants.

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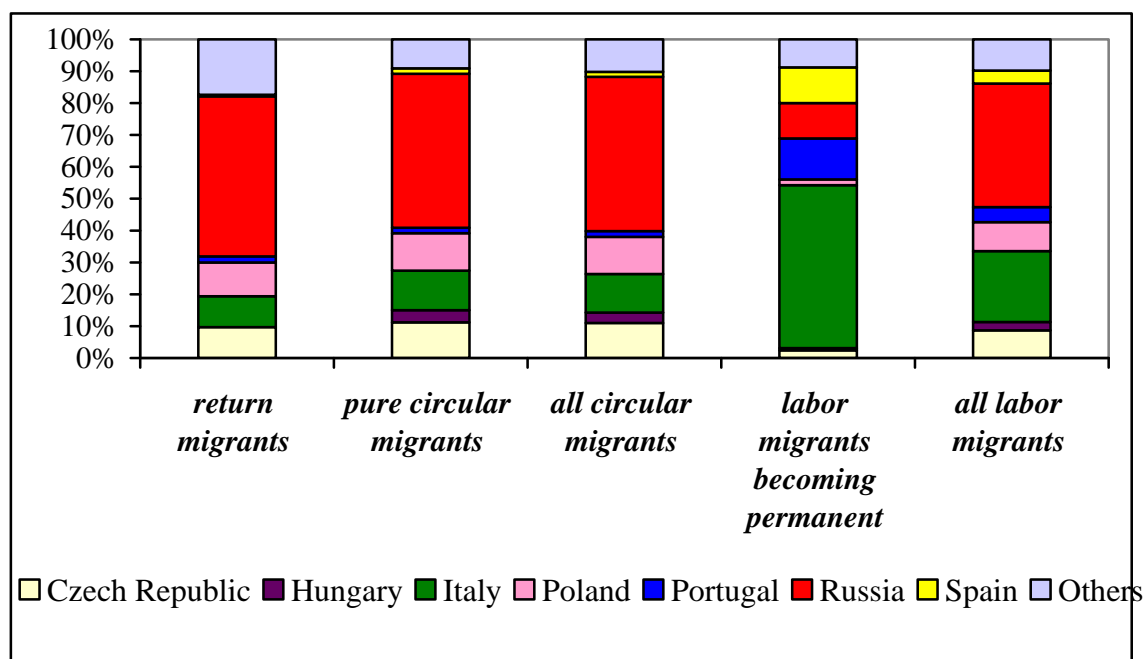
<sup>1</sup> The first special national survey on labor migration was carried out in 2008, and the second in 2012. Results of the 2012 survey have not yet been summarized. In 2008 survey migrants were defined as Ukrainian citizens of working age (women 15-54 years, men (15-59 years) who have been abroad for employment at least once from January 2005 to the interview date in May-June 2008

<sup>2</sup> Hereinafter the data of the 2008 survey, unless stated otherwise.

Circular migrants compared to permanent labor migrants are 6.5 times more likely to work in Poland, 5.0 times more likely to work in Hungary, 4.6 times more likely to work in the Czech Republic and 4.4 times more likely to work in Russia (figure 1). At the same time, among non-circular migrants the share of persons working in Italy is 4.2 times higher, in Spain 7.2 times higher and in Portugal 7.4 times higher.

The main difference between return migrants and pure circular migrants is that the former are much more oriented to countries which are not among the main seven country recipients of the Ukrainian labor force in particular the United Kingdom.

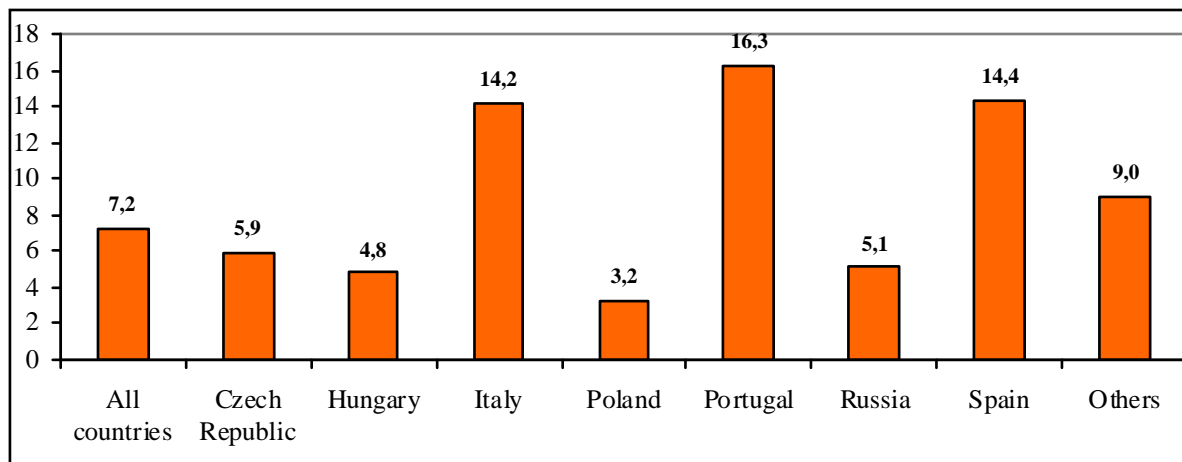
**Figure 1. Ukrainian labor migrants by recipient country and type of migration, 2008**



Source: author's estimate based on the Modular Population Survey on Labour Migration Issues 2008.

The duration of stay made by Ukrainian workers varies a lot depending on the destination country (figure 2). In terms of the average duration of the stay of Ukrainian citizens the seven main recipient countries clearly fall into two groups: the first comprises countries neighboring with Ukraine (Russia, Poland, the Czech Republic, Hungary), and the second comprises South Eastern Europe (Italy, Portugal, Spain). On average, seasonal and one-time jobs of 1-3 months length, are typical for Ukrainians working in the Russian Federation. Short trips 2-3 times a year are usually made by Ukrainian migrants going to Poland and Hungary. The trips of three quarters of workers to the Czech Republic last – on average – no longer than half a year. At the same time persons working in Southern Europe usually stay there longer.

**Figure 2. Average duration of stay abroad (in months) of Ukrainian labor migrants by recipient country, 2008**



Source: Modular Population Survey on Labour Migration Issues 2008.

Ukrainian male labor migrants work primarily in construction, this type of economic activity is dominant among men working in the Czech Republic and Russia and is most massive in Portugal, Spain and Hungary. For Ukrainian men working in Poland and Italy construction ranks second, while the main activity for Ukrainians in Italy is to work as domestic servants and in Poland as agriculturalists. High share of agricultural workers are also registered among those who work in Spain. In Hungary, Ukrainians, more often than in other main recipient countries, work in trade and industrial production. In Portugal and Russia Ukrainians often work in the transportation sector.

The employment structure of Ukrainian female migrants varies significantly depending on the countries of stay. The main types of activities for Ukrainian women in foreign countries are: work as domestic servants especially in Italy, as well as in Portugal and Spain; construction in Hungary, Portugal, Czech Republic, and the Russian Federation); and trade primarily in the Russian Federation and Hungary. The main type of activity for Ukrainian women in Poland is agriculture which is also typical in Spain. An increased share of persons employed in industrial production is observed among Ukrainian women who work in Hungary and the Czech Republic, in hotels and restaurants, in Spain and the Czech Republic. Permanent female migrants work much more as domestic servants than circular female migrants.

Circular migration is slightly male-dominated compared to the overall Ukrainian migration stock. The share of women among circular migrants is 1.3% lower than among labor migrants in general (31.6 versus 32.9%). This is primarily due to the fact that women occupied in private households are less oriented towards circular migration. Men working in transportation are also less inclined towards circular migration.

Young people are more frequently oriented towards non-circular migration, which constitutes a negative trend for Ukraine. Thus, among circular migrants 44.2% are below 35 years, while among migrants who never returned to Ukraine the number is 45.1%. As a matter of fact, the educational level of circular labor migrants is visibly lower than that of Ukrainian population employed at home: the average number of education years equals 11.8 and 15.3 years respectively, and the share of persons with complete higher education is 13.5 and 23.2%.

External labor migration is a crucial factor in labor market development and for remitted foreign currency. Based on the author's estimates (Pozniak 2010, IDSS 2010), labor trips abroad (even without super long-term migration) reduce the number of unemployed in Ukraine by 1.6 times. The lions share of this reduction is in the field of circular migration. Based on the complex methodology

developed by IDSS, it has been calculated that the total volume of money transfers made by migrants in 2007 was 4.67 bln. U.S. dollars while the volume of labor migrants' income was 6.68 bln. U.S. dollars, and in 2010, 4.43 and 6.32 bln. USD respectively (IDSS, 2011). The main contribution in terms of remittances is made by circular migrants, as persons oriented towards permanent migration are less inclined to send money to Ukraine and often bring relatives to their new home countries.

The volume of labor immigration in Ukraine is not large today. In early 2011 the number of foreigners temporarily working in Ukraine, according to the State Employment Service, was 7,800 people; the maximum was registered in late 2009 when 12,400 foreigners worked there. The stock is characterized by a high level of rotation: 25.0% work in Ukraine in the course of less than half a year, 25.4%, from 6 months to one year, 23.4%, from one to two years, 14.2%, 2-3 years and only 12.0%, over 3 years. In 2010 66.3% of all persons working at the beginning of the year left Ukraine, while 61.4% of foreign workers who were in Ukraine as of early 2011 arrived in 2010. Thus, a significant share of foreigners leaves Ukraine within a year of arriving, without becoming registered workers at the beginning or end of the year. Put in other terms, labor immigration in Ukraine is, just as labour emigration from Ukraine, primarily circular.

## **Conclusions and policy recommendations**

The labor migration of Ukrainian citizens became large-scale and is associated with numerous social challenges. However, a consistent policy has not yet been formed. The state policy of external labor migration regulation ought to rely on a complex of measures directed towards ensuring the return flow of external labor trips and the social protection of Ukrainian workers abroad. It should stimulate the investment of money earned by migrants in the Ukrainian economy, and improves employment opportunities in the domestic labor market.

The strategic objective of state policy in the field of labor migration ought to see the gradual return of those labor migrants who are ready or under certain circumstances can be ready for re-emigration. To that end the Cabinet of Ministers ought to develop and adopt the State Program for return and reintegration of long-term migrants, supplementing that program with regional programs. The key component of these programs ought to be the facilitation of entrepreneurship as the most promising area for attracting migrants' wages to the Ukrainian economy. According to the estimates of IDSS, the aggregate financial effect from possible entrepreneurship pursued by return labor migrants and young people in Ukraine, whose parents continue working abroad, exceeds 1 bln. hryvnas as of 2010 (Pozniak, 2012), or 100 mln. euro according to the average annual official exchange rate of the National Bank of Ukraine (official site of National Bank of Ukraine). In addition to the financial effect, the creation of favorable conditions for entrepreneurship in Ukraine will contribute to an increase in the level of return labor trips and the integration of long-term migrants into society that changed while they were away.

At present the encouragement of circular migration is not among migration policy priorities. This notion is yet to become an established part of the public officials' and policy-makers' vocabulary. The first practical attempt to organize circular migration was made in 2008 within the project "Temporary and circular migration between Ukraine and Portugal". This project was supported by the International Organization for Migration, World Bank and European Commission. In the course of the project's implementation in 2009-2010, 50 Ukrainian workers were employed in Portugal, primarily in agriculture (picking berries and fruit, working in greenhouses...). In Ukraine the project was implemented in the Khmelnytsky Region. This region was chosen as it had one of the highest unemployment rates in the country. The project generated significant interest: on average there were three applicants per one vacancy. Selection was carried out by Khmelnytsky regional employment center, while the Portuguese side made the final confirmation of the list of participants.

Project results were positively assessed by both its participants and the Ukrainian authorities. Unfortunately, this project was not expanded. The main reason was the decision of the Portuguese

Government to suspend efforts to attract a workforce from abroad, a decision made in the context of the global financial crisis. However, this project, while it lasted, demonstrated the potential of such programs and the possibility of their implementation after the end of recession in countries that are recipients of a Ukrainian workforce. For instance, IOM experts developed an extremely valuable document for the project: instructions regarding the specific steps necessary for partners to make, in order to arrange Ukrainian workers' employment.

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**The Legal Framework for  
Circular Migration in Ukraine**

**LYUDMILA DAVYDOVYCH**

*Legal Module*





## **1. International Cooperation**

### **1.1 Ukraine and EU Member States**

The positive impact on circular mobility between Ukraine and its closest neighbors, Member States of the European Union such as Poland, Hungary, Romania and Slovak Republic might be explained by the facilitation of issuance of visas for Ukrainian citizens. Apart from the Agreement between Ukraine and the European Community on the Facilitation of the Issuances of Visas (entered into force in 2008), bilateral agreements on local border traffic have been concluded between Ukraine and abovementioned countries. According to the provisions of these agreements Ukrainian citizens – residents of the border area – are able to travel more freely across the border as they are required to hold only valid travel documents confirming their identity and a special multiple exit and re-entry permit: issued initially for two years and under certain conditions for five years thereafter.

The simplified procedure for issuing short-stay visas allows citizens of Ukraine to travel more frequently to the EU Member States<sup>1</sup> with a view to looking for legal work or to passing entry exams for schools and universities. After having found a job or after having received the conformation for enrollment in a school or at a university, they come back to Ukraine with a view to applying for long-stay visas or resident permits.

According to the abovementioned agreements citizens of Ukraine – close relatives (parents, children) of citizens of Ukraine residing legally within the territories of EU Member States have a right to apply for the simplified visa procedure. The only document they need to confirm the purpose of the trip is the written invitation of the inviting party. Such simplified procedures allow migrants to keep close relations with their families during their stay abroad.

Ukraine has concluded bilateral agreements on social security with Bulgaria, Spain, Latvia, Lithuania, Romania, Slovakia, Hungary and the Czech Republic. According to these agreements migrants as well as their families enjoy all social rights and freedoms within the territory of the country they stay in. Ukraine also concluded intergovernmental agreements with Latvia, Lithuania, Poland and Slovakia on the reciprocal employment of citizens: this regulates the status of migrants, workers within host countries, as well as their legal relations with Ukraine while living and working abroad. Bilateral agreements on the social protection of migrants is very important not only with a view to protecting their social rights while staying and working abroad. There is also the need to regulate their legal relations with the country of origin. Through protecting social security rights of migrants working or residing these agreements potentially facilitate legal circular migration.

### **1.2 Ukraine and post-Soviet republics**

Between Ukraine and almost all post-soviet republics – the exception is Turkmenistan – a mutual visa-free regime has been established. Therefore, circular mobility between these countries and Ukraine is quite active.

Ukraine is also a party to the Convention on the Protection of the Rights of Migrant Workers and Members of their Families from CIS countries.<sup>2</sup> According to the convention all main rights and freedoms of migrants must be protected by the state: the right for work, the right to free emergency

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<sup>1</sup> In 2011 among the EU Member States and Ukraine, the most active mobility process was noticed between Ukraine and Germany (593,470 mutual visits), Italy (217,243 mutual visits), Great Britain (155,563 mutual visits), France (131,152 mutual visits), Czech Republic (202,039 mutual visits).

<sup>2</sup> Convention on protection of rights of migrant workers and members of their families of states – members of CIS <http://document.ua/pro-ratifikaciyu-konvenciyi-pro-pravovii-status-trudjashih-m-doc83110.html>

medical help, the right to social protection (excluding pensions), the right to education, the right to register a child born within the territory of a host country as its citizen, etc. The Convention protects the private property status of migrants and regulates the procedure for sending and receiving monetary goods through migrants.

Within the framework of the CIS, Ukraine is party to the Agreement on Safeguarding the Human rights of Citizens of CIS Member Countries in the field of pension provisions; the Agreement on Cooperation in Healthcare; the Agreement on the Procedure for Investigating Industrial Accidents, which happen to workers while abroad.

Ukraine also concluded bilateral intergovernmental agreements on Social Security and Pension Guarantees with Azerbaijan, Belarus, Georgia, and Moldova.

The agreements are valid and are observed.

### **1.3 Ukraine and third countries**

Among third countries and Ukraine the most active migration was noticed with Turkey (681,955 mutual visits), the United States (148,643 mutual visits), Israel (251,102 mutual visits), Canada (33,946 mutual visits) and China (39,506 mutual visits). Ukraine does not have bilateral agreements on the protection of migrant rights with these countries.

## **2. National Legal Framework**

### **2.1 Freedom of movement for Ukrainian citizens**

According to the Law on the “Rules of exit of the territory of Ukraine and entry to the territory of Ukraine by the citizens of Ukraine”<sup>3</sup>, citizens of Ukraine have the right to exit and enter Ukraine. The right of the citizens of Ukraine to exit Ukraine may be restricted in the following cases: the citizen of Ukraine is under criminal inquiry; is condemned – until the period of punishment is over or the citizen of Ukraine is released from punishment, etc. The right of the citizen of Ukraine to enter Ukraine may never be restricted under any conditions.

### **2.2 Dual Citizenship**

Under the law of Ukraine “On the Citizenship of Ukraine”<sup>4</sup> dual citizenship for Ukrainian citizens is not allowed. If a citizen of a foreign country would like to acquire Ukrainian citizenship he/she is obliged to renounce his/her previous citizenship. If the citizen of Ukraine simultaneously becomes a citizen of a second country (such cases often happen if, according to the law of the second country, the foreigner can keep their previous citizenship) Ukraine treats this person only as a citizen of Ukraine.

### **2.3 Foreign Ukrainians**

Under the Law “On the Legal Status of Foreign Ukrainians”<sup>5</sup> ethnic Ukrainians from other countries or ethnic Ukrainian stateless persons are classed as foreign Ukrainians. Foreign Ukrainians have legal

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<sup>3</sup> the Law of Ukraine dated from 21 January 1994 № 3857- XII on the “Rules of exit of the territory of Ukraine and entry to the territory of Ukraine by the citizens of Ukraine” is available at <http://zakon2.rada.gov.ua/laws/show/3857-12>

<sup>4</sup> the law of Ukraine “On the Citizenship of Ukraine” is available at <http://zakon1.rada.gov.ua/laws/show/2235-14>

<sup>5</sup> Law of Ukraine from 4 March 2004, № 1582-VI “On legal Status OF Foreign Ukrainians” is available at <http://zakon2.rada.gov.ua/laws/show/1582-15>

facilitations in terms of entry and stay, work and study in Ukraine: in case of necessity, multiple-entry visas for foreign Ukrainians may be issued for up to five years; issuance of visas for foreign Ukrainians are free of charge; there is no need for foreign Ukrainian to present any invitation or other document of proof when applying for a visa at Ukrainian consulates; Foreign Ukrainians have the right to work in Ukraine without work permit; and they can immigrate to Ukraine regardless of immigration limits (“quota”) set up by the Ukrainian government. Foreign Ukrainians also have “quotas” in Ukrainian high schools and Universities according to which they may study on the same basis as Ukrainian citizens.

## 2.4 Visa policy

Under the Law of Ukraine “On the legal status of foreigners and stateless persons” № 3773-VI, adopted 22 September 2011<sup>6</sup>, foreigners or stateless persons may enter Ukraine with a passport and a visa; this will suffice if nothing else is prescribed by the national legislation of Ukraine or its international agreements. According to the Decree of the Government of Ukraine dated 1 June 2011, № 567 on new “Rules on issuing of visas to enter Ukraine or to transit through its territory”<sup>7</sup> there are three types of Ukrainian visas:

- *transit visa* (type “B”) – allows visitors to transit through the territory of Ukraine, with a maximum stay of 5 days after entry;
- *short-stay visa* (type “C”) allows visitors to stay within the territory of Ukraine for not more than 90 days;
- *long-stay visa* (type “D”) is usually issued for 45 days and during this period foreigners or stateless persons must request the State Migration Service of Ukraine to issue him or her with a temporary residence permit or a permanent residence permit.

Under the “Rules on the extension of the term of stay and extension or shortening of the term of temporary stay of the foreign citizens and stateless persons in Ukraine”,<sup>8</sup> the State Border Guard Service of Ukraine registers the temporary stay of the foreigners, coming to Ukraine from visa-free countries, at the border. In this way there is no necessity for them to fulfill any other procedures with the State Migration Service of Ukraine. But they must leave the territory of Ukraine before the permitted visa-free period of stay is over.

The maximum period of stay in Ukraine for citizens coming from visa-free countries is 90 days from 180 days (90 days in Ukraine, 90 days out its territory). In case of necessity (*force majeure*) the period of stay may be prolonged by the State Migration Service of Ukraine for the term necessary for the resolution of the problem. But once that term ends foreigners are obliged to leave the territory of Ukraine. The re-entry to Ukrainian territory is not normally allowed during the next 90 days.

The abolition of visa regimes for foreigners, desiring to visit Ukraine for less than 90 days along with the implementing of new visa or immigration legislation of Ukraine as well as facilitating/canceling visa regimes for Ukrainians by second countries has had a positive impact on the circular migration process. So according to the official statistics of the State Border Guard Service of Ukraine, the number of foreigners that entered Ukraine in 2011 for business, official contacts, tourism, studying, work, cultural or religious exchange grew. It climbed, indeed, from 6,430,940 in 2000 to

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<sup>6</sup> The Law of Ukraine “On the legal status of foreigners and persons without citizenship”, adopted 22 September, 2011<sup>6</sup>, № 3773-VI is available at <http://zakon3.rada.gov.ua/laws/show/3773-17>

<sup>7</sup> Decree of the Government of Ukraine dated 1 June 2011, № 567 on new “Rules on issuing of visas to enter Ukraine or to transit through its territory”<sup>7</sup> is available at <http://zakon1.rada.gov.ua/laws/show/567-2011-%D0%BF>

<sup>8</sup> Decree of the Government of Ukraine № 150, adopted 15 February, 2012, is available at <http://zakon2.rada.gov.ua/laws/show/150-2012-%D0%BF>

21,415,296 in 2011.<sup>9</sup> In 2011 most of the visits were made for short-stay purposes (private visits, tourism and business) so migration had a temporal character. At the same time 140,108 foreigners came to Ukraine hoping for a long stay (work, study etc). Most of them came from the Russian Federation, Moldova, Poland, Germany and France. An analysis of the statistics on reciprocal migration between Ukraine and other countries shows that the most active circular migration exists between Ukraine and the countries it shares borders with: the Russian Federation, 14,493,942 mutual visits; Moldova, 6,293,164 mutual visits; Belarus, 4,225,116 mutual visits; Poland, 6,822,989 mutual visits; Hungary, 2,589,008 mutual visits; Romania, 1,291,975 mutual visits; and the Slovak Republic, 989,922 mutual visits<sup>10</sup>.

## 2.6 Stability and flexibility of residence

Foreigners coming to Ukraine with a view to stay for more than 90 days must apply for Ukrainian long-stay visa “D” at Ukrainian consulates. They must then request the State Migration Service of Ukraine, within forty five days of entrance, to issue him/her a temporary/permanent residence permit. Long-term Ukrainian visas “D” may also be issued to the family members of foreigners and stateless persons temporary residing in Ukraine.

According to the Law on “On the legal status of foreigners and stateless persons”, a temporary residence permit is issued for foreigners and stateless persons who entered Ukraine to work, study, volunteer and for international technical support etc. In accordance with the Law ‘On Immigration’ the permanent residence permit is issued for a foreigners or stateless persons who received permission to immigrate to Ukraine.<sup>11</sup>

Under Article 24 of the Law on the legal status of foreigners, the term of validity of temporary residence permit may be shortened by the State Migration Service of Ukraine if the foreigner no longer has the legal basis to stay in Ukraine. Hence, as soon as a permit holder ceases the activity for which he or she was granted the temporary residence status, he or she faces the risk of losing their residence status.

There is no differentiation between the rights regimes enjoyed by temporary and permanent residents: in accordance with the Law on the legal status of foreigners, foreigners and stateless persons who are under the jurisdiction of Ukraine have the right to recognize their legal personality, human rights and freedoms without taking into consideration their legal status within Ukraine (permanent/temporary resident, refugee etc.).

## 2.6 Provisions facilitating or restricting the regularity of back-and-forth movement

There is no necessity for migrants who temporarily or permanently reside in Ukraine to prolong their visa as the only document they need for free travel in and out Ukraine is a temporary or a permanent residence permit.

Furthermore, in case a foreigner needs to prolong his/her stay in Ukraine (for instance his/her working contract has been prolonged) he/she may do it without leaving Ukraine with a view to applying for a new long-stay visa “D” at Ukrainian consulate abroad. In particular, such foreigners have to provide the evidences of necessity for prolonging his/her stay in Ukraine before the date of expiry of their previous temporary residence permit to the State Migration Service of Ukraine.

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<sup>9</sup> Official statistics of the State Border Guard Service of Ukraine on the number of visitors to Ukraine is available at <http://www.ukrstat.gov.ua/>

<sup>10</sup> Ibid.

<sup>11</sup> The Law of Ukraine “On immigration”.

When a foreign citizen or stateless person who previously held a Ukrainian visa/residence permit applies for Ukrainian visa/residence permit normally his/her application is assessed without taking into consideration any previous visa/permit. The exception is made for migrants from “migration risk” countries: in this case if an applicant previously held a Ukrainian visa/residence permit it is always assessed as a “plus” during the assessment of his/her next application (“*bona fide* migrants”).

Usually there are no restrictions on the re-entry of former resident permit holders. The re-entry of such persons may be restricted only in the case of violation on a previous stay. The restrictions on the exit of foreigners to the territory of Ukraine are the following: a person is a suspect or is accused of a criminal offence; he or she is condemned for a criminal offence; or if his/her exit is against the interests of the national security of Ukraine.

## Conclusions

During 2011 the visa-immigration legislation of Ukraine was radically changed. New decrees and laws of Ukraine were adopted, visa procedures as well as procedure of entry-exit were simplified. For instance, instead of twenty-two types of Ukrainian visas there are now three types (short and long stay, transit visa). In case a foreigner needs to prolong his/her stay in Ukraine (for instance his/her working contract has been prolonged) he/she may do it without leaving Ukraine with a view to applying for a new long-stay visa “D” at Ukrainian consulate abroad. Members of migrant families of migrants that temporarily or permanently reside in Ukraine received a right to apply for a long stay. This new visa legislation should enhance the circular migration of foreign citizens in Ukraine.

Ukrainian legislation protects migrant rights – citizens of Ukraine working and residing abroad through national legislation and provisions of bilateral agreements. At the same time there is the need to expand a network of bilateral agreements in the field of social security and the protection of rights of Ukrainian citizens migrants residing and working abroad.



**Developing Circular Mobility:  
Observations from Ukraine**

**EKATERYNA IVASCHENKO-STADNIK**

*Socio-Political Module*

## National policy-framework<sup>1</sup>

Circular migration is becoming an increasingly acceptable concept for contemporary recipient countries in the EU, above all, as an instrumental policy option “minimizing the costs and maximizing the effects”<sup>2</sup> of international labour force mobility. However, circular migration as a term has never been brought into special focus within the Ukrainian policy framework. Since the mid-2000s, circular migration has risen on the agenda of the UN Global Commission for Migration<sup>3</sup>, IOM<sup>4</sup>, EU Commission<sup>5</sup>, World Bank<sup>6</sup> and other leading world actors in the field of international migration and global social development. The concept of circular migration has been regularly addressed in a number of cross-national theoretical discussions and research papers supported by the international organization and developed with the active participation of Ukrainian experts<sup>7</sup>. Yet, circular migration has not been translated into the integrated national policy-framework which so far keeps avoiding “circular migration” employing, instead, the broader “temporary labour migration” [*tymchasova trudova migratsiia*] or the narrower “seasonal work” [*sezonna robota*], “contract job” [*kontraktna robota*], “frontier labour migration” [*prykordonna trudova migratsiia*] and “commutation flows” [*maiatnykova migratsiia*]. It is important to note, however, that the relatively broad range of terms do not – with the exception of “contract job” – rule out illegal forms of temporary labour migration and, therefore, cannot meet the main international criteria of circular migration.

In order to extract a helpful term for policy conceptualization and operation-purposes in the Ukrainian context, one should refer to the basic circular migration definitions. Summing up various approaches developed in the international policy documents and academic discussions, circular migration can be defined as a pattern of voluntary spatial mobility that allows back and forth legal movements between the countries regulated by labour market needs and that is seen as a beneficial solution for both sending and receiving countries, and the migrants themselves<sup>8</sup>.

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<sup>1</sup> I wish to express my thanks to Professor Irina Pribytkova for her valuable advice and informative comments for this explanatory note.

<sup>2</sup> See METOIKOS / Circular migration patterns in Southern and Central Eastern Europe: Challenges and opportunities for migrants and policy makers <http://www.mmg.mpg.de/research/all-projects/metoikos/>

<sup>3</sup> See Vertovec S., *Circular Migration: the way forward in global policy?* / Oxford: IMI Working paper, 2007. p.3.

<sup>4</sup> World Migration 2005. Costs and Benefits of international Migration. – Geneva: IOM, 2005. <http://www.imi.ox.ac.uk/pdfs/imi-working-papers/wp4-circular-migration-policy.pdf>

<sup>5</sup> See EU MEMO 07/197 Circular migration and mobility partnerships between the European Union and third countries. – Brussels, 2007. <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/197>

<sup>6</sup> See De Ron A., EUROPE: World Bank Promotes ‘Circular Migration’ / IPS, September 7, 2012. <http://www.ipsnews.net/2007/01/europe-world-bank-promotes-circular-migration/>

<sup>7</sup> See, for example, Markov I. et al., [2010] *Circular Migration: new approaches to the old concepts. Materials of research project* ‘The Elaboration of the Concept Policy of Circular Migration of Ukrainians to the EU Countries through the Cooperation of Expert Communities and Analytical Centres of Ukraine and the EU’ <http://www.navigator.net/public/docs/uploaded/6h00a5b-circular.pdf> [Bilingual version in Ukrainian and English].

<sup>8</sup> See Vertovec S.(2007), p.2; *Legal Migration and Its Skills Dimensions* // ETF INFORM, 3<sup>rd</sup> June 2010 <http://www.etf.europa.eu/ETFBlog.nsf/dx/issue05.htm>; Contradiction in terms is not only a Ukrainian problem. As Professor Ronald Skeldon argues, circular migration is widely described and managed as “a form of temporary labour migration”. He emphasizes that “the issue is of central importance to policy makers if they are indeed to take circular migration seriously as a separate form of migration that can be taken forward in the policy debate on managing migration”. See Skeldon R., Paper presented at the Swedish EU Presidency Meeting on Labour Migration and its Development Potential in the Age of Mobility, Malmö, 15-16 October 2009 [http://www.cities-localgovernments.org/committees/fccd/Upload/library/skeldon\\_2010\\_managing\\_migration\\_for\\_development\\_-\\_is\\_cm\\_the\\_answer\\_en.pdf](http://www.cities-localgovernments.org/committees/fccd/Upload/library/skeldon_2010_managing_migration_for_development_-_is_cm_the_answer_en.pdf)



The cornerstone difference between Ukrainian and international approaches is the legal status as a basic requirement (this implies that circular migration is governed by policies aimed to regulate the terms of migrants admissions and stay, the ability to hold more than one nationality, or eligibility to obtain permanent residency permit<sup>9</sup>. So far, the temporariness rather than the legal status of migration usually stands at the center of much of national migration discussions in Ukraine; they touch upon various patterns of movements which are circular (to a different city, region or country and return) and can be described as an individual or household strategy aimed at improving material standing but not necessarily bringing “win-win-win results”.

Besides the problems with migration vocabulary, the institutional obstacles towards the elaboration of the state concept of circular migration policy produce complexities of their own. According to the IOM and ILO, the main gaps in the field of labour migration in Ukraine are caused by the absence of a conceptual legal framework on national policy and management. It is acutely noted that “the existing policy documents have a declarative character focusing on the need for their creation rather than on clearly cut outlined mechanisms and feasible tools for implementation”<sup>10</sup>. Among the other shortcomings of circular migration policy-making we might include: 1) the absence of coordination between agencies involved in data collection on different types of temporary labour migration and, as a result, a failure to understand the real scope of the problem; 2) no consistency in migration policies at the state level and no efficient mechanism of cooperation with international organizations in Ukraine that might promote circular migration and that might initiate further collaborative work. Since the Kuchma presidency, notably during his first term (1994-1999), national priorities have included the strengthening of Ukraine as an independent state and a reliable partner on the international stage. As a result, most key migration documents and executive agreements were signed in cooperation with the foreign plenipotentiaries in that period.<sup>11</sup> Later on, during Kuchma’s second term (1999-2005) and during the Yushchenko presidency (2005-2010) the principles of collaboration became more and more superficial, top level discussions rarely yielding any improvements in migration legislation and management. Since the Yanukovich presidency (starting from 2010), the principles of mutual understanding and good will seem to have been even further debased. Notably, in his numerous interviews before the end of his term, the EU Representative in Ukraine José Manuel Pinto Teixeira pointed out that during the four years of his mission in Ukraine (2008-2012) he had not had a single meeting with the Ukrainian president.<sup>12</sup> The Ministry of Foreign Affairs’ reaction to Mr. Teixeira’s criticism of the sluggish attitude of the Ukrainian authorities towards cooperation with the EU was in itself interesting. The representative of the Ministry suggested that Mr. Teixeira’s comments “should rather refer to Cape Verde where he is sent on his next mission”<sup>13</sup>. Similarly, the other geopolitical dimensions of international dialogue (including the CIS and third countries) remain heavily biased towards non-binding assurances of commitment to shared values and strategic partnership or, more often, meet a wide range of pressing macroeconomic demands. Obviously, circular migrants will never

<sup>9</sup> Newland K., *Circular Migration and Human Development* / UNDP Human Development Research Paper, 2009/42, pp.1-2.

<sup>10</sup> *Migration Trends and Policies in the Black Sea Region: cases of Moldova, Romania and Ukraine* / Institute of Public Policy, 2008. p.43. Authors refer to the original citation in IOM (2006) Labour Migration Assessment for the WNIS Region. International Organization for Migration, p.8.

<sup>11</sup> This can be illustrated, for example, by the fact that concrete steps towards the elaboration of migration legislation were successfully initiated by the Representative of the United Nations High Commissioner for Refugees Jozsef Dörke who personally discussed urgent issues with the Ukrainian President (it is worth mentioning that during his mission he had been awarded an honorary diploma by the Ukrainian cabinet for his “valuable personal contribution to finding out solutions of migration problems”. See <http://www.uazakon.com/document/spart55/inx55402.htm> A number of executive agreements in the field of labour migration between Ukraine and third countries were signed in that period (as they were not subject to the constitutional requirement for ratification, they soon have become effective).

<sup>12</sup> See Interview with José Manuel Pinto Teixeira:  
[http://www.interfax.ru/txt.asp?id=263509&sec=1483&utm\\_source=twitterfeed&utm\\_medium=twitter](http://www.interfax.ru/txt.asp?id=263509&sec=1483&utm_source=twitterfeed&utm_medium=twitter)

<sup>13</sup> See LB-UA news, August 30, 2012, downloaded 18 September, 2012 from  
[http://lb.ua/news/2012/08/30/168272\\_midu\\_mnenie\\_teysheri\\_sovsem.html](http://lb.ua/news/2012/08/30/168272_midu_mnenie_teysheri_sovsem.html)

become a subject of law and management in Ukraine until the issue of circular migration is fully addressed at the highest state level, and the Ukrainian government proves capable of being a reliable and consistent partner accountable to the standard rules, regulations and principles of communication and interaction with the international community. For the time being, the top Ukrainian authorities are fully preoccupied with the forthcoming election campaign. And the administrative chaos of numerous state bodies, agencies and departments dealing with migration is reaffirmed by the ceaseless rotations which have become a widespread but not very logical personnel policy in the last decade. In this unfortunate situation Ukrainian circular migrants has become the subject of research for academics and NGOs' alone. Circular migrants' dynamics evolve regardless of the country's remote policies. As a result of the in-depth studies, those migrants who work abroad on a temporary basis are not very well aware of the policy discussions, they do not rely on Ukrainian law and rarely expect support from the Ukrainian state<sup>14</sup>. Migrants rather rely on themselves and their experience, they establish personal links and community networks where possible, they apply for help from various private mediators and sensitively react to changing labour demands. Involuntary unemployment in origin countries and global recession remain, so far, the main driving forces of circular mobility.

### **Envisaging the directions of circular mobility: going from and coming to Ukraine**

Obviously, the lack of a comprehensive nationally adopted definition of circular migration entails many traps. This is particularly evident if one seeks to analyse the directions of circular mobility. A considerable obstacle here is the illegal character of most movements that remains an important disadvantage for working Ukrainians going abroad: circular migrants are neither a subject of regular state agency reports nor focus of NGO data collection. Certainly, to compensate for the lack of reliable data, a research focus can be placed on exploring the subjective dimensions of the phenomenon by means of qualitative and quantitative analysis. Yet, within this approach, not only aspirations and strategies for realising different migration goals and patterns but also the assessment of actions needs to be explored.

It should be emphasised that no study has been done so far to estimate circular mobility in Ukraine as there is not a simple or a single approach to such a study. Migration aspirations and plans do not directly correlate with movements. Thus, one cannot address the question by drawing upon survey data. Obviously, only migration statistics together with panel studies (enabling us to trace changes in concrete households) can shed some light on the confusing picture of "migration aspirations and claims". Still, again, it is very unlikely that circular migrants and mobility will become subject for research analyses and policy monitoring until they are properly categorised. In concrete terms, we need, first of all, to define what group or groups can be referred to as circular migrants in Ukraine. Should it be only those who move back and forth legally or, in a broader and far-reaching policy-oriented sense, should those who can potentially become legal be targeted, too: i.e. the group of migrants that seeks legal status but fail to obtain it due to the lack of circular migration policies between Ukraine, the CIS and the EU countries<sup>15</sup>?

No socio-political estimates can be detached from the available official migration figures provided by the state agencies responsible for the analysis of the migration situation. Overall, according to the

<sup>14</sup> This is illustrated by the rich data of the in-depth interviews with return migrants and family members of the actual migrants conducted within the THEMIS research project in 2011-2012. The results will be published in early 2013.

<sup>15</sup> As stated on the Ukrainian Governmental portal in June 2012, "at present, Ukraine is a party to the European Convention on the Legal Status of Migrant Workers, the Agreement on Cooperation in the field of labor migration and social protection of migrant workers, the Protocol to the Agreement, which governs the processes of border migration within the CIS, Convention on Legal Status of Migrant Workers and their family members of the CIS; also, Ukraine is a party in 13 bilateral agreements on employment and social protection of migrant workers and 8 bilateral agreements on social security". Still, the remaining task is to "extend the contractual framework" with the main destination countries in the CIS and EU. See [http://www.kmu.gov.ua/control/en/publish/article?art\\_id=245370738&cat\\_id=244314975](http://www.kmu.gov.ua/control/en/publish/article?art_id=245370738&cat_id=244314975)

estimates of the Ministry of Labour and Social Policy which is in charge of monitoring labour migration and which registers labour migrants<sup>16</sup> and the estimates of experts, only 2 to 3 percent of the actual number of migrants is captured by official statistics<sup>17</sup>. Data are considered to be more reliable for foreign migrants, a significant share of whom study or work in Ukraine legally. A majority of immigrants come from CIS countries. According to the available data of the Ministry of Internal Affairs<sup>18</sup>, most foreign nationals which came to Ukraine are Russian nationals (up to 25% of foreigners). The second and the third largest groups are citizens of China (9%) and Turkey (5%). These are followed by the citizens of other CIS countries: Azerbaijan, Uzbekistan, Georgia, Moldova (around 4% for each group), Armenia and Belarus (2%). Other legal resident groups include Syrians, Jordanians, Indians, Iranians and migrants from Vietnam (up to 2% each). In 2008 there were about 264,000 foreigners registered in Ukraine<sup>19</sup>. Different estimates on the total number of immigrants, both legal and illegal, roughly reach half a million, so, the share of estimated unregistered migrants is smaller than the registered ones. The regions most populated by legal immigrants are Kyiv (the capital), Donetsk, Kharkiv and Odesa. Immigrants are mainly employed in retail trade, construction and agriculture<sup>20</sup>. Unfortunately, no supplementary data which would tell us more about the mobility dynamics of immigrants is available. Consequently, it is hard to estimate accurately the share of foreigners who can be properly defined as circular migrants. Obviously, the economic situation in the origin country as well as many other personal and environmental aspects influence their motivation, behaviour and future plans. Without special studies (surveys, focus groups, in-depth interviews) it is also very difficult to predict how this situation will evolve. Most experts argue that the immigration situation in Ukraine is rather stable with a certain point of equilibrium<sup>21</sup>.

For Ukrainians settings are different: only a small share of them, including those who remain Ukrainian citizens and who work abroad temporarily and legally on the basis of labour contacts with a mediator agency or employer, are taken into consideration of the State Employment Centres and reflected in the national statistics (see Figure 1). Although the data are not accurate, they still reflect the trend, i.e. the number of labour migrants from Ukraine tends to increase as long as the economic situation in the country remains unstable. The Russian Federation is the most popular place of employment (see Figure 2)<sup>22</sup>, particularly for Russian-speaking Ukrainians from Eastern and Southern Ukraine. But the decision to become a labour migrant in the EU or a third country is often supported by the possibility of gaining a legal status in the states which initiated the legalization process including Portugal, Italy and Spain<sup>23</sup>. Also, people in the Western border zone opt for circular labour

<sup>16</sup> Both citizens of Ukraine who temporarily work abroad and foreigners employed in Ukraine fill out the special registration forms, correspondently – 1-TM- and 2-TM where “TM” is an abbreviation for labour migrant [*trudovyi migrant*]. Specifically, in 2007 Ukrainians employed abroad via licensed mediators made up around 73,000 (around 2 percent of the estimated number of Ukrainians working abroad). See [http://www.icps.com.ua/files/articles/50/33/Migration\\_ENG.pdf](http://www.icps.com.ua/files/articles/50/33/Migration_ENG.pdf)

<sup>17</sup> According to a World Bank report published in 2007 Ukraine ranks third on the list of sending countries, following the Russian Federation and Mexico, ahead of India and China, and fourth on the list of receiving countries, after the US, the Russian Federation and Germany.

(See *Migration Trends and Policies in the Black Sea Region: cases of Moldova, Romania and Ukraine* / Institute of Public Policy, 2008. p. 34). See [http://www.icps.com.ua/files/articles/50/33/Migration\\_ENG.pdf](http://www.icps.com.ua/files/articles/50/33/Migration_ENG.pdf)

<sup>18</sup> Ibid, pp. 35- 36.

<sup>19</sup> Ibid.

<sup>20</sup> *Migration Trends and Policies in the Black Sea Region: cases of Moldova, Romania and Ukraine* / Institute of Public Policy, 2008. p. 36.

<sup>21</sup> See Documents security and Migration Policy: assessments and recommendations of the international working groups for Ukraine / Europe without Barriers, International Renaissance Foundation, Kiev, 2011. pp.6, 9, 10.

<sup>22</sup> See also main destination countries of Ukrainian labour migrants with gender distribution in 2005-2008: *Migration in Ukraine: facts and figures* / IOM Mission in Ukraine, 2011, p.3 [http://iom.org.ua/en/pdf/Facts&Figures\\_b5\\_en\\_f.pdf](http://iom.org.ua/en/pdf/Facts&Figures_b5_en_f.pdf)

<sup>23</sup> Pribytkova I., unpublished comment to the METOIKOS experts' questionnaire on circular migration.

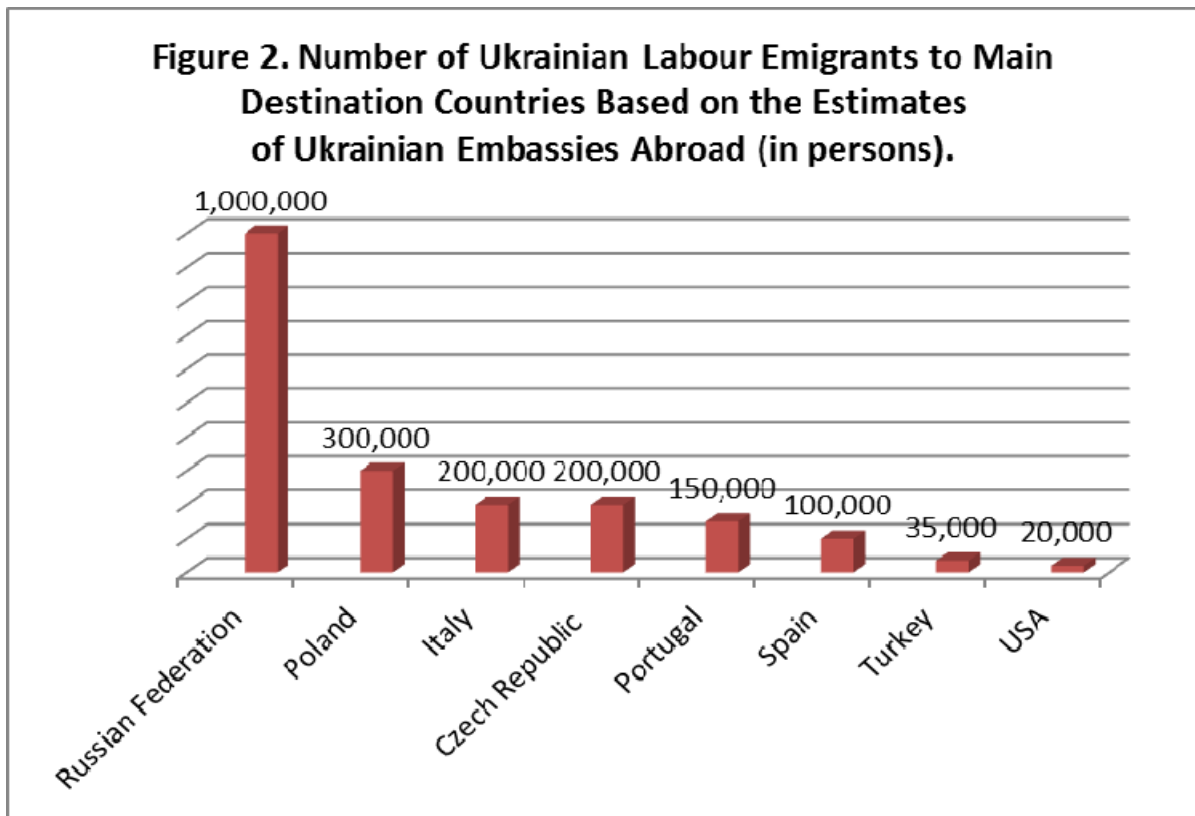
migration to neighbouring EU countries with better job opportunities: Poland, the Czech Republic, Slovakia and Hungary. It is worth underlining that in recent years, maritime states are becoming the most popular circular employment destinations. International ship owners flying the flags of Cyprus, Greece, Germany, the US, Liberia, Latvia, Malta, the Netherlands and Poland hire Ukrainian sailors: these, according to the Ministry of Labour and Social Policy, currently make up nearly 90 percent of all registered labour migrants<sup>24</sup>.



Source: Data of the Ministry of Labour and Social Policy of Ukraine given in Labour Migration Assessment for the WNIS Region / IOM, Kiev, 2007. – p.10 and European Neighbourhood and Partnership Instrument. Ukraine: national indicative programme 2011-2013 / European Union, 2011, p.44.

[http://ec.europa.eu/world/enp/pdf/country/2011\\_enpi\\_nip\\_ukraine\\_en.pdf](http://ec.europa.eu/world/enp/pdf/country/2011_enpi_nip_ukraine_en.pdf)

<sup>24</sup> See Delo (2007). “Український флот моряков-остарбайтерів”, 13 February, 2007, <http://delo.ua/business/ukrainskij-flot-morjakov-ostar-20223/>



Source: Labour Migration Assessment for the WNIS Region / IOM, Kiev, 2007, p.11.

Obviously, the above-mentioned figures cannot give us the true scope of circular migration. According to the estimates of the Ukrainian expert group led by Igor Markov, based on on-line experts interviews: “typologically, Ukrainians [are involved in] circular migration” assuming that “more than 80% of them plan to return home; nearly 70% have families in Ukraine and maintain close contacts with their relatives in the homeland while staying abroad; 90% of them realize Ukraine-oriented plans (buy real estate, pay for their children’s education, etc.)”<sup>25</sup>. Following these assumptions based on the surveys and taking into account that, according to IOM data<sup>26</sup>, the number of labour migrants from Ukraine is 2.1 million, or about 5% of the Ukraine’s population, potential circular migrants might stand at more than 1,5 million. Apparently, not all migrants, undertaking circular trips, have legal status (though, they can be considered as potential circular migrants if they are registered). Also, some labour migrants with legal status in the country of residence are underpaid and cannot cover their regular travels back home. Alternatively, they have insecure jobs and are not allowed to leave. As a result, even if they originally planned to be abroad for some time and return home, they are forced to stay longer for financial or other personal reasons. As we have seen during the in-depth interviews with return migrants from Western Europe<sup>27</sup>, most of them had undertaken one or two trips and have returned back home for good after their tourist visa expired or after they had encountered problems with mediation companies (for example, companies lost licenses and were not in a position to arrange further trips). Periods in host countries were often short-term, making proper integration in the new environment impossible: up to six month of hard work, with no considerable professional up-grade,

<sup>25</sup> See Markov I. et al., [2010] *Circular Migration: new approaches to the old concepts. Materials of research project ‘The Elaboration of the Concept Policy of Circular Migration of Ukrainians to the EU Countries through the Cooperation of Expert Communities and Analytical Centres of Ukraine and the EU’*, p.9.  
<http://www.navihator.net/public/docs/uploaded/6h00a5b-circular.pdf> [Bilingual version in Ukrainian and English]

<sup>26</sup> Labour Migration Assessment for the WNIS Region / IOM, Kiev, 2006, p.5.

<sup>27</sup> This research was carried out within the THEMIS project sponsored by the University of Oxford 2011-2012 with migrants who returned to Ukraine from the UK, the Netherlands, Norway and Portugal.

little communication with the locals and no interim trips back home. If trips were long-term there is a high risk of isolation from the family in Ukraine (up to several years with rare visits home during holidays, usually once a year). Again, illegality was the most apparent disadvantages for migrants which made them a subject to abuse on the border and prevented circular trips.

### The development of circular mobility in the future: moving to Russia, the EU or third countries?

As sociologist Irina Pribytkova argues, the future space of circular mobility (opportunities and intentions) is created by the scope of offers in: employment, housing, education, leisure time, communication, recreation, various environmental characteristics, level of political stability, personal security and human rights. “People are looking for the best places”, this is the main principle of the “self-organized process of social behaviour of individuals”<sup>28</sup>. In terms of analysing future mobility trends, Pribytkova has suggested a very useful instrument for measuring circular mobility which she developed, tested and applied several years ago within the survey *Ukrainian Society: Monitoring the Changes*, in cooperation with methodologist Natalya Panina<sup>29</sup>. According to her approach, the real circular migrant are those who have travelled abroad three times or more (see Table 1)<sup>30</sup>.

**Table 1. “How many times have you travelled abroad for temporary work?”, in %.**

	2005	2006	2008	2010	2012
Never	91.7	89.5	89.9	91.6	90.8
Once	3.4	4.7	4.2	3.3	3.3
Two times	1.7	2.2	1.5	1.4	2.1
Three times	0.8	1.1	0.8	0.4	1.0
More than three times	2.0	2.2	3.3	2.2	2.2
No answer	0.3	0.3	0.3	1.1	0.6

Source: Results of the survey “Ukrainian society 1992-2012”, Institute of Sociology, NAS Ukraine.

**Table 2. “Do you plan to go abroad for temporary work during the next year (2005-2012)?”, in %.**

	2005	2006	2008	2010	2012
Yes	6.3	6.1	6.2	6.2	5.3
No	93.6	93.6	93.7	93.7	94.0
No answer	0.1	0.4	0.1	0.1	0.7

Source: Results of the survey “Ukrainian society 1992-2012”, Institute of Sociology, NAS Ukraine.

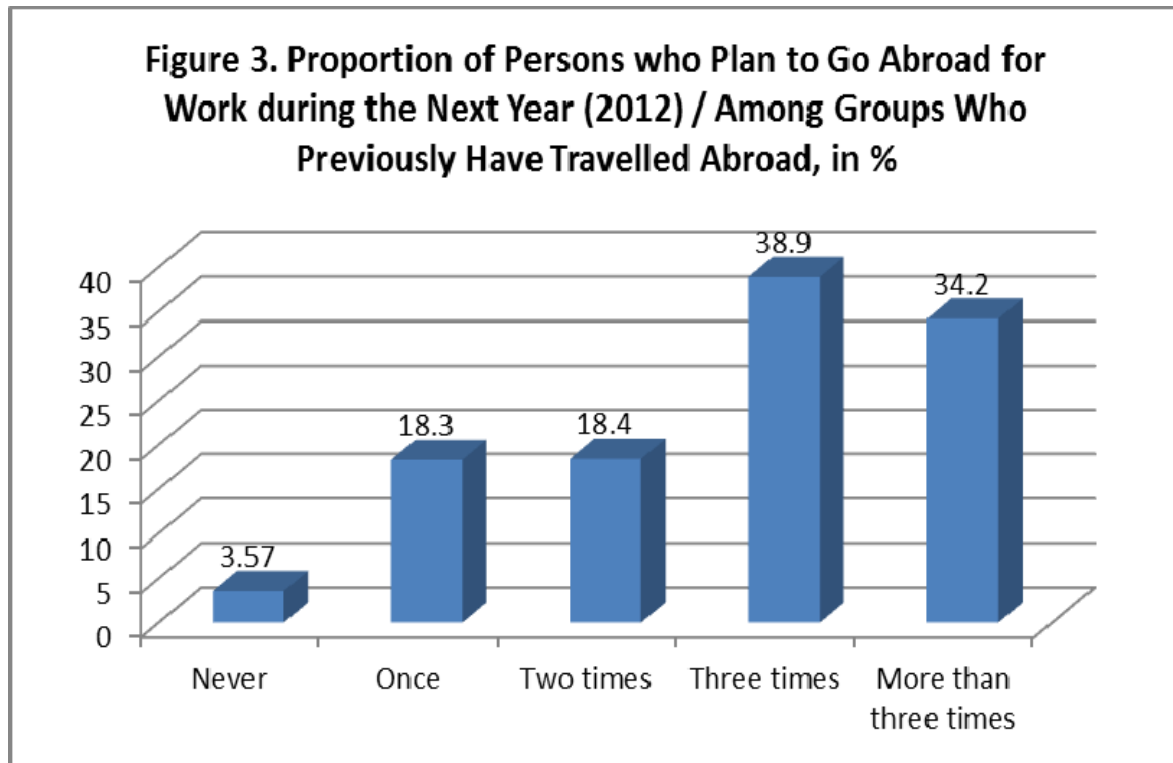
Those who have been abroad once or twice usually hesitate to go abroad again since they have not established any networks for regular travel and feel uncertain as to future movements during the year to come (see Table 2 and Figure 3). As the data suggest (though for a relatively small group of respondents), the number of “circular migrants” in 2012 was equal to that in 2008. This tendency is explained by the deteriorating economic situation in those years: less stable than in 2010 when the

<sup>28</sup> See Pribytkova I., Пространственная самоорганизация населения: теоретико-методологические предпосылки исследования // Социология: теория, методы, маркетинг. - 2009. - №4 [Spatial self-organisation of population: theoretic and methodological preconditions of research] [http://www.i-soc.com.ua/institute/pb\\_07.pdf](http://www.i-soc.com.ua/institute/pb_07.pdf) [in Ukrainian]

<sup>29</sup> Ibid. See also *Ukrainian Society: Sociological Monitoring (1994-2004)*, Institute of Sociology, NAS Ukraine, 2004. p.35. Survey is conducted annually. The nationwide random sample represents the adult population of Ukraine according to sex, age, ethnicity and type of community (city, town, village). The sampling error does not exceed 2.3 percent.

<sup>30</sup> Drawn from the Institute of Sociology of Ukraine survey results (SPSS dataset).

number of respondents, who travelled abroad several times, fell away somewhat. On average, “circular migrants” make up around 3 percent of the sample.



Source: Results of the survey ‘Ukrainian society 1992-2010’, Institute of Sociology, NAS Ukraine.

This is a stable group which includes mainly middle-aged married adults. Looking at the longitudinal results of the survey<sup>31</sup>, one can estimate that Russia will remain the most popular destination for potential circular migrants from the largely pro-Russian East. This is mainly a question of geo-political, cultural, language and family reasons. However, a decrease of circular migrants to the CIS will be a continuing tendency: compare 12.7% of those who were planning to leave for Russia in 1994 to 8.3% in 2010, to other CIS countries at 1.1-1.2 through 1994-2010. Most active Ukrainian migrants from the Western regions will persistently opt for the neighbouring EU countries. Indeed, the share of Ukrainians who circularly move to the EU area with “better employment opportunities and higher life standards” will increase gradually; as also observed in the previous years, those who were going to leave for non-CIS countries made up 4.6 percent in 1994 and 7.9 in 2010<sup>32</sup>. Circular movement between Ukraine and third countries (non-CIS and non-EU) will remain sparse, except for the maritime areas. Desire to find a new job and improve quality of life will be, just as in the previous years, an increasingly important driving force of circular mobility<sup>33</sup>.

By and large, circular mobility is a self-administered phenomenon regulated by very complex individually driven mechanisms: by family-to-community relations, personal values and emotional settings (on the micro-level) as well as by access to resources and local labour market opportunities (on the meso-level). Each potential migrant personally “develops one’s human and social capital and evaluate... the benefits accruing to oneself and their immediate kin in terms of projected life course”<sup>34</sup>. Consequently, it is hard to predict accurately how circular migration will evolve within the next

<sup>31</sup> *Ukrainian Society: Sociological Monitoring (1994-2010)*, Institute of Sociology, NAS Ukraine, 2011.

<sup>32</sup> Ibid.567.

<sup>33</sup> Ibid, p.568

<sup>34</sup> Marshall V., Heinz W., at al. (eds.), *Restructuring Work and Life Course*, University of Toronto Press, 2001, -537.

decade: any change in the economic and political situation, in the media environment, in community attitudes, etc. can trigger news shifts in migration systems.

However, experts assume that ensuring legal provisions for the development of circular migration as a specific form of migration, beneficial to an individual and all participating agents, will serve as a powerful spur to the sustainability of the world labour market. Doing this will influence individual aspirations, plans and decision-making (“it’s better to work abroad but return home”<sup>35</sup>). For all circular migrants (who move legally, voluntary and beneficially) migration should be ensured as free and secure “movement-on-demand” provided by the host country. It also should imply that “returning home” makes a promising life perspective guaranteed by the law in the country of origin.

In the case of Ukraine, under the current economic circumstances in the EU, CIS and worldwide circular migrants should be fully prepared to fill the employment niches not advantageous for the national labour force. They should think twice about the possible benefits and losses for themselves. In this respect, both the Ukrainian state and our international partners should be well-informed (more interdisciplinary research on the issue is needed) and fully committed to concrete rather than formal tasks and responsibilities in the field of circular migration. This means more bilateral policy initiatives at governmental level as well as the elaboration of contractual frameworks with the main destination countries.

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<sup>35</sup> This is illustrated by the interviews with the children of migrants conducted in Lviv within the CARIM project in March 2012. Also, according to the data presented by the Korrespondent journal in 2011: 79 percent of Ukrainians were interested in signing terminal labour contracts with foreign employers. See <http://korrespondent.net/business/economics/1286838-opros-70-ukraincev-hoteli-by-rabotat-za-rubezhom>



## **CHAPTER 5**

### **Return and Readmission**



**Information on Foreigners Deported,  
Expelled and Voluntarily Repatriated  
from Belarus**

**LIUDMILA SHAKHOTSKA  
ANASTACIA BOBROVA**

*Demographic-Economic Module*

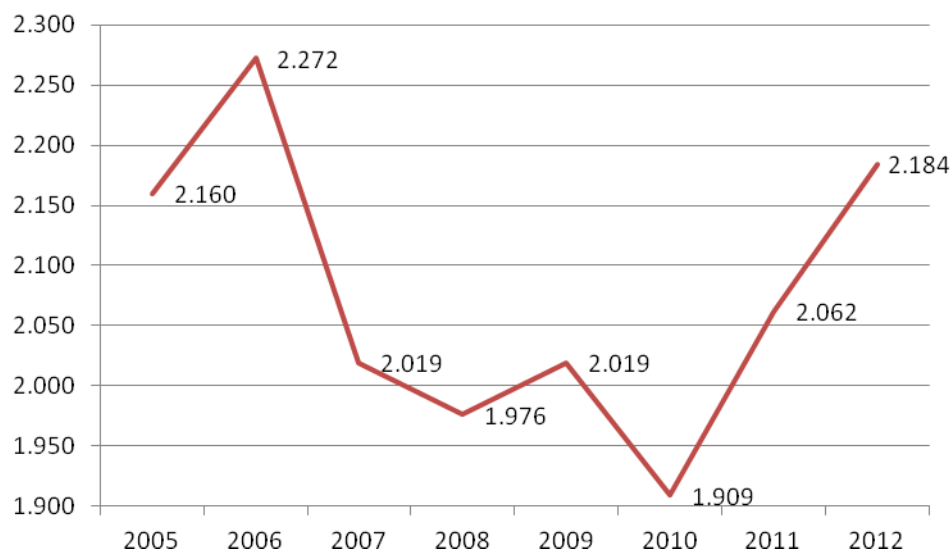


## 1. Deportation and Expulsion

According to the Law on the legal status of foreign citizens and stateless persons in the Republic of Belarus “deportation is possible in case if the person is staying on the territory of Belarus without any legal grounds for such stay” (Law of RB, 2010). These kinds of sanctions have existed in Belarus since 1993 and apply to those who violated stay rules there. In 2010 there was a separate chapter on deportation, expulsion and release to neighboring states in the Law on the legal status of foreigners and stateless persons in the Republic of Belarus. A characteristic feature of foreigner expulsion is that it applies to those who do not violate the rules of stay, but who are in violation of another legislation (tax, administrative, criminal, etc). Expulsion can also be applied in the interest of national security, public order, protection of moral norms, population health, rights and freedoms of the citizens of the Republic of Belarus and other persons.

Overall, 16,600 persons were expelled from the Republic of Belarus in 2005-2012 according to the data of the Ministry of Interior (Figure 1).

**Figure 1. Number of deportees and expulsions from Belarus, 2005-2012**



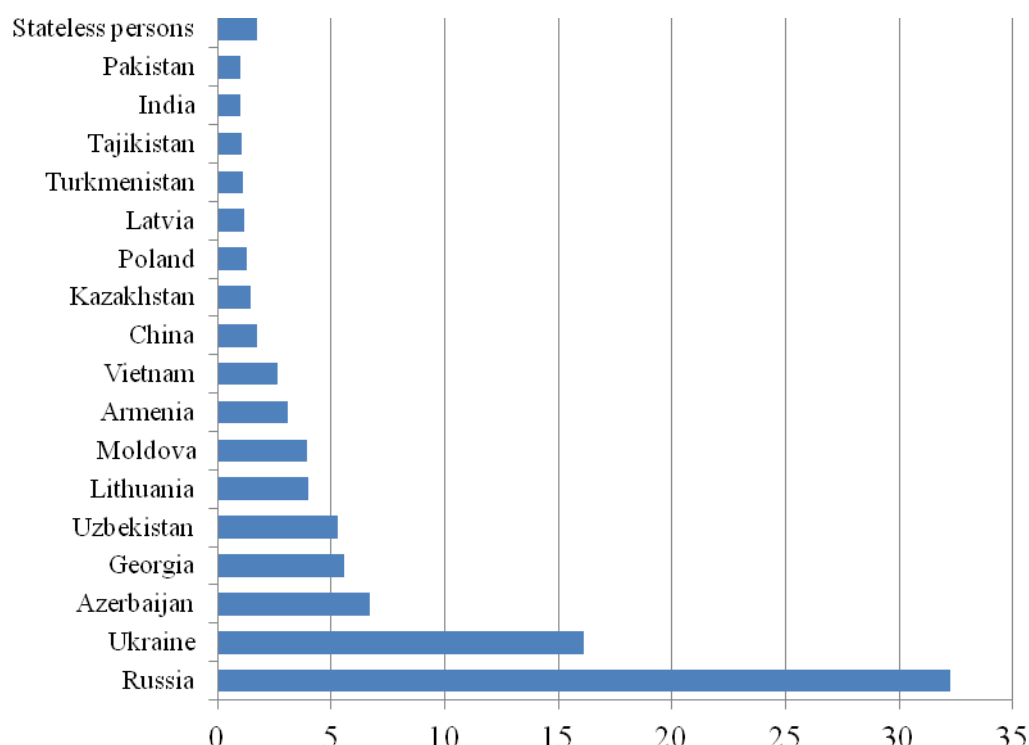
Source: data of the Ministry of Interior of the Republic of Belarus

The primary destination countries for migrants who intend to cross the border illegally are European Union countries. Russia also deserves special attention though for different reasons. Due to open borders, the primary direction from which foreigners arrive in Belarus in order to transit or cross the border with European countries is Russia. That being said, people arriving from Russia are citizens of different states.

Overall, in 2005-2012 the highest number of people were deported and expelled to Russia (32.2%), Ukraine (16.1%), Azerbaijan (6.7%), Georgia (5.6%) and Uzbekistan (5.3%).

Chart 2 presents the list of countries with the highest shares in the total number of deportees and expulsions for 2005-2012.

**Chart 2. Shares of certain countries in the total number of deportees and expelled from Belarus in 2005-2012**



Source: data of the Ministry of Interior of the Republic of Belarus

Share of 94 other countries is under 1%.

## 2. Voluntary Repatriation

Below you will find data on volumes of assistance provided for voluntary repatriation (voluntary return). In particular, such assistance may include consultations, assistance in preparing documents for departure, medical examination and the payment of reintegration grants. According to UNHCR data in 1997-2005 Belarus contributed to the voluntary repatriation of 110 persons, including 38 persons who returned home to Afghanistan, 32 to Georgia, 14 to Tajikistan, 11 to Russia, 5 to Cameroon, 2 to Liberia, 2 to Nigeria, 2 to Rwanda, 1 to Ethiopia, 1 to Somalia, 1 to Sri Lanka and 1 to Turkey.

Since 2007 assistance for voluntary repatriation was provided to illegal migrants and migrants who had applied for refugee status but who were denied, or withdrew their applications. This assistance was given in the framework of the EU-UNHCR-IOM program “Assisted voluntary return of migrants to their home country”. The program had 2 stages: 2007-2008 and 2009-2011. Assistance was provided to 420 migrants, including 297 who were sent back to their country of origin. The vast majority were male. Their share in the total number of returnees is 77.7%. As for age structure, over 80% of migrants were aged 18 to 60, 69% of them men (Table 1). Eight percent were children and adolescents. However, if we consider their share by gender, more than 30% among female population were aged 0 to 18, while the share of children and adolescents among men was under 10%.

**Table 1. Number of beneficiaries of voluntary repatriation assistance for migrants in 2007-2011 in Belarus**

Age group	Males			Females			Total	
	person	(in % among total)	(in % among males)	person	(in % among total)	(in % among females)	person	(in %)
0-4	11	3,7	4,8	7	2,4	3,6	18	6,06
5-17	11	3,7	4,8	13	4,4	6,7	24	8,08
18-59	205	69	88,7	44	1,8	2,7	249	83,84
60 and older	4	1,3	1,7	2	0,7	1,1	6	2,02
Total:	<b>231</b>	<b>77,7</b>	<b>100</b>	<b>66</b>	<b>22,3</b>	<b>100</b>	<b>297</b>	<b>100</b>

Source: information provided by IOM office in Belarus

The total number of voluntary repatriates in 2007-2011 originating from the countries which are in CARIM-East group, was 144 persons: almost 50% of all returnees. Of these, Georgia alone accounted for 44%. Also, in 2007-2011, 8 Russians, 2 Armenians, 1 Ukrainian and 1 Azeri were returned. More detailed information can be found in Table 2.

The share of European Union countries in this respect was not even 1%. In particular, 1 migrant was returned in 2007-2010 to Great Britain, to Estonia, and to Lithuania.

**Table 2. Number of assistance beneficiaries for voluntary repatriation from Belarus to their home country in 2007-2011.**

Country of origin	2007	2008	2009	2010	2011	TOTAL:
<b><i>CARIM-East</i></b>						
Georgia	1	3	36	55	37	<b>132</b>
Russian Federation	0	5	1	1	1	<b>8</b>
Armenia	0	0	2	0	0	<b>2</b>
Ukraine	0	1	0	0	0	<b>1</b>
Azerbaijan	0	0	0	1	0	<b>1</b>
<b>Total CARIM-East</b>	<b>1</b>	<b>9</b>	<b>39</b>	<b>57</b>	<b>38</b>	<b>144</b>
<b><i>EU</i></b>						
Estonia	0	0	0	1	0	<b>1</b>
Lithuania	0	0	0	1	0	<b>1</b>
UK	0	0	0	0	1	<b>1</b>
<b>Total EU</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>3</b>
<b><i>Other</i></b>						
Afghanistan	5	0	1	10	43	<b>59</b>
Vietnam	0	13	11	8	4	<b>36</b>
Pakistan	0	13	3	5	0	<b>21</b>
Lebanon	0	0	5	1	0	<b>6</b>
China	0	2	3	0	0	<b>5</b>
Ghana	0	0	4	0	0	<b>4</b>
Bangladesh	3	0	0	0	0	<b>3</b>
Nigeria	0	0	1	1	1	<b>3</b>
Turkey	0	2	0	0	0	<b>2</b>
Serbia	0	0	1	1	0	<b>2</b>
Sri-Lanka	0	1	0	1	0	<b>2</b>
Egypt	0	1	0	0	0	<b>1</b>
Cuba	0	0	0	1	0	<b>1</b>
Iran	0	1	0	0	0	<b>1</b>
Iraq	0	0	1	0	0	<b>1</b>
Kyrgyzstan	0	0	1	0	0	<b>1</b>
Kazakhstan	0	0	0	1	0	<b>1</b>
Guinea	0	0	0	0	1	<b>1</b>
<b>TOTAL:</b>	<b>9</b>	<b>42</b>	<b>70</b>	<b>88</b>	<b>88</b>	<b>297</b>

Source: information provided by the IOM office in Belarus

As can be seen in Table 2, most of the migrants expressing willingness for voluntary return come from southern countries. Foreigners from Afghanistan (20%), Vietnam (12%), and Pakistan (7%) had the highest shares.

It is noteworthy, that a program for the reinforcement of migration policy on readmission in Eastern Europe will be launched in February 2013. Key countries for this program are Belarus, Moldova, and Ukraine. Key players include irregular migrants and those who were denied refugee status, in particular, the most vulnerable categories of the population. The results of the measures stipulated in the document will give an idea about the number of persons who benefited from readmission assistance in the current year.

Currently, due to the fact that readmission and reintegration agreements are still under examination and have not yet been signed, there are no data on the number of released persons.



## References

Law of the Republic of Belarus 2010 No. 105-3 on legal status of foreigners and stateless persons in the Republic of Belarus: National register of legal acts of the Republic of Belarus, 2011, No.134, 2/1874.



**Readmission, Return and  
Reintegration: Legal Framework  
in the Republic Of Belarus**

**OLEG BAKHUR**

*Legal Module*



# 1. Legal terms and procedures

## 1.1 Return

The term 'return' is not defined in the national legislation of Belarus, but legal basis for the return of Belarusian citizens is established by the Constitution adopted in 1994<sup>1</sup>. Besides, the legislation determines procedure for return of citizens permanently residing outside Belarus<sup>2</sup>.

One can also come across this term in the Belarusian normative legal acts, when impossibility of return to the country of previous permanent residence is mentioned in case of persons who were granted refugee status (asylum)<sup>3</sup>, as well as when powers and responsibilities of state bodies of different levels<sup>4</sup> are described, when rights of foreigners who were granted refugee status or asylum in Belarus<sup>5</sup> are stipulated, and objectives and tasks of Belarusian demographic security are formulated<sup>6</sup>.

Legal foundations for pre-schedule termination of employment contracts with foreign employees are established at the international level. Thus, Agreement on cooperation in labor migration and social protection of labor migrants<sup>7</sup> and non-binding legal act "Migration of workforce in the CIS countries"<sup>8</sup> stipulate that when a labor migrant violates legislation, authorities<sup>9</sup> can demand pre-schedule termination of labor relations and return of the migrant to the state of departure. There is also an obligation of employer to terminate the labor contract following the request by the relevant body, if a migrant worker violates the law<sup>10</sup>.

Furthermore, international agreements of Belarus on temporary employment of citizens establish a procedure for financing the return to the labor migrant's country of origin in certain cases. Thus, for instance<sup>11</sup>, if labor contract with a foreigner is terminated due to the closing down or reorganization of the employing company<sup>12</sup>, then such labor migrant is subject to return to the country of departure<sup>13</sup> at

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<sup>1</sup> See article 30 of the Constitution: citizens of the Republic of Belarus have a right ... to return without hindrance (to the Republic of Belarus)

<sup>2</sup> Thus, these citizens are obliged to take themselves off the consular registry of citizens permanently residing outside Belarus (article 21 of the Law No. 49-Z of 20.09.2009 (version of 25.11.2011) "On procedure of departure of the citizens of the Republic of Belarus from the Republic of Belarus and entry to the Republic of Belarus")

<sup>3</sup> Article 5 of the Law No. 354-Z of 23.06.2008 (version of 03.07.2011) "On granting the refugee status, additional and temporary protection to foreigners and stateless persons in the Republic of Belarus"

<sup>4</sup> For instance: Belarusian Ministry of Foreign Affairs in the field of forced migration assists in voluntary return of foreigners who were granted refugee status or additional or temporary protection to the states of their citizenship or previous customary residence or in their movement to the countries that agree to admit them (article 13 of the Law No. 354-Z of 23.06.2008 (version of 03.07.2011) "On granting the refugee status, additional and temporary protection to foreigners and stateless persons in the Republic of Belarus")

<sup>5</sup> Foreigner who was granted refugee status is entitled to voluntary return to the state of citizenship or previous customary residence (article 19 of the Law No. 354-Z of 23.06.2008)

<sup>6</sup> Article 5 of the Law No. 80-Z of 04.01.2002 (version of 31.12.2009) "On demographic security of the Republic of Belarus"

<sup>7</sup> Concluded in Moscow on 15.04.1994 (version of 25.11.2005) (article 5 of the Agreement)

<sup>8</sup> Adopted by the Regulation of the Interparliamentary Assembly of CIS member states "On non-binding legal act "Migration of workforce in the CIS countries" (adopted in St. Petersburg on 13.05.1995)

<sup>9</sup> State agencies whose scope of competence includes national security and/or migration management

<sup>10</sup> Article 5 of the above-mentioned 1995 Regulation of the Interparliamentary Assembly of CIS member states

<sup>11</sup> Article 6 of the Agreement on cooperation in the field of labor migration and social protection of migrant workers (Moscow 15.04.1994 (version of 25.11.2005))

<sup>12</sup> Or due to job cuts or redundancy

<sup>13</sup> Relevant for the member states of this Agreement

the expense of employer<sup>14</sup>. Requirements associated with such situations are also established by norms of national legislation<sup>15</sup>, for instance, employment contracts of Belarusian citizens abroad are to include provisions on mutual obligations of parties on return of those workers to the Republic of Belarus after the end of their labor contracts<sup>16</sup>. At the same time, unfortunately, neither at the international, nor at the national level there is a mechanism for the return of Belarusian citizens to the country. There are no specific legal procedures regarding Belarusian citizens who were deported or expelled from other countries (furthermore, they are not registered and accounted for (separately – as persons expelled or deported from another state), as far as this category of citizens always crosses the state border of Belarus on their own and on legal grounds<sup>17</sup> and is not granted any legal status).

Some normative legal acts talk about the need to create conditions for return of highly qualified professionals and promising researchers to Belarus and identify tasks that need to be accomplished for this objective to be achieved<sup>18</sup>.

## 1.2 Repatriant, repatriation

The term ‘repatriant’ is also not used or defined in the national legislation. However the Regulation of the Interparliamentary Committee of Belarus, Kazakhstan, Kyrgyzstan, Russia and Tajikistan No. 8-13 “On the model law “On migration”<sup>19</sup> stipulates who should be considered a repatriant. According to article 28, the status of repatriant is granted to autochthons who are victims of political oppression, as well as their descendants. Let us note that the real mechanism for granting this status is not well-described in the national legislation, hence there are no rights or obligations for persons who actually correspond to this definition of repatriant.

## 2. Procedure of return of the Belarusian citizens to the country

It is noteworthy that Belarusian migration legislation does not envisage measures to assist in return of Belarusian citizens and persons who used to have Belarusian citizenship. Of course, this is an oversight, but an even bigger oversight of migration policy is that one does not set an objective of developing a strategy in this field.

The state encourages repatriation only at the declarative level<sup>20</sup>. The only legislative provision contributing to repatriation is the one that establishes the fact that a person used to have Belarusian citizenship as legal grounds for obtaining a permanent residence permit in Belarus<sup>21</sup>. Therefore, repatriation in Belarus is carried out on a voluntary basis and at the expense of returning persons.

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<sup>14</sup> Besides, such labor migrant is entitled to the same benefits and compensations as the ones offered by the legislation of the country of employment to its citizens laid off for the above-mentioned reasons

<sup>15</sup> Part 1 article 19, part 2 article 20 of the Law No. 225-Z “On external labor migration” of 30.12.2010

<sup>16</sup> Article 20 of the Law No. 225-Z “On external labor migration” of 30.12.2010

<sup>17</sup> “The right of the citizen to enter the Republic of Belarus cannot be restricted” – part 4 article 3 of the Law No. 49-Z “On procedure of departure of the citizens of the Republic of Belarus from the Republic of Belarus and entry to the Republic of Belarus” of 20.09.2009 (version of 25.11.2011)

<sup>18</sup> Regulation of the Belarusian Council of Ministers No. 1403 of 08.12.2005 (version of 16.12.2008) “On the State Migration Program for 2006 – 2010”

<sup>19</sup> Adopted in St. Petersburg on 04.04.1999

<sup>20</sup> At the same time it does not create obstacles for it either

<sup>21</sup> Article 53 of the Law No. 105-Z “On legal status of foreign citizens and stateless persons in the Republic of Belarus”

### 3. Return of foreigners to the countries of origin or arrival

#### 3.1 Assistance to voluntary return of foreigners

As for assistance to voluntary return of foreigners to the country of origin, transit or third country, the only relevant provision is article 13 of the law No. 354-Z of 23.06.2008<sup>22</sup>. It determines that the Belarusian Ministry of Foreign Affairs in the field of forced migration assists in voluntary return of foreigners, who were granted refugee status or additional or temporary protection, to the states of their citizenship or previous customary residence, or in their movement to the states agreeing to admit them. However, nowhere in the legislation is it specified what kind of assistance is rendered<sup>23</sup>.

If a foreigner having permit for permanent residence in Belarus (residence permit) is willing to move to another country for permanent residence, this foreigner's permit for permanent residence in Belarus will be annulled<sup>24</sup>. A foreigner illegally staying in Belarus and willing to depart for another state is held administratively liable and after that can depart without hindrance.

To sum up, foreigners can leave Belarus on a voluntary basis without hindrance, and the state does not provide assistance in this case.

### 4. Compulsory return

Belarusian legislation envisages two forms of compulsory return of foreigners to other countries: deportation and expulsion.

Legal grounds for deportation and expulsion of foreigners from the country are stipulated by the Law No. 105-Z "On legal status of foreign citizens and stateless persons in the Republic of Belarus"<sup>25</sup>.

#### 4.1 Deportation

Deportation is a type of administrative sanction and represents administrative expulsion of a foreigner from Belarus<sup>26</sup>. Foreigner can be deported to one of the following states: state of citizenship; state of customary residence; state from the territory of which this foreigner arrived in Belarus; state that expressed willingness to admit this foreigner; state requesting his or her extradition; state with which Belarus has an agreement on readmission<sup>27</sup>. Let us note that by now Belarus has not concluded any agreements on readmission<sup>28</sup>.

<sup>22</sup> (version of 03.07.2011) "On granting the refugee status, additional and temporary protection to foreign citizens and stateless persons in the Republic of Belarus"

<sup>23</sup> One can presume that this could be assistance within the scope of authority of the Belarusian Ministry of Foreign Affairs, i.e. communication via diplomatic channels with a purpose of coordinating this issue with the relevant state

<sup>24</sup> Article 57 of the Law No. 105-Z "Permit for permanent residence issued to a foreigner can be annulled, if: ... foreigner obtained permit for permanent residence in a foreign state; ... foreigner stayed outside the Republic of Belarus for over one hundred eighty three days in the calendar year

<sup>25</sup> Chapter 5 "Deportation. Expulsion" (articles 64 – 70) of the Law No. 105-Z

<sup>26</sup> Article 6.2 "Types of administrative sanctions" of the Code of Administrative Offences No. 194-Z of 21.04.2003 (version of 30.12.2010) // National registry of legal acts of the Republic of Belarus, 09.06.2003, No. 63, 2/946.

<sup>27</sup> Regulation of the Council of Ministers of the Republic of Belarus No. 333 of 15.03.2007 (version of 31.05.2012) "On approval of the Regulation on procedure of deportation of foreign citizens and stateless persons"

<sup>28</sup> At present the issues of readmission in Belarus are not well elaborated at the legal level due to complexities associated with conclusion of bilateral international treaties. There is a Regulation of the Belarusian Council of Ministers No. 1918 of 31.12.2010 "On approval of the Regulation on procedure of transfer to adjacent states of foreign citizens and stateless persons who violated the rules of the near-border transfers set forth in the international treaties of the Republic of

If a foreigner commits an administrative offence leading to administrative sanction in the form of deportation<sup>29</sup>, the ruling on deportation can be made by the competent state body (by that we understand judges, Belarusian border service bodies, internal affairs bodies, and state security bodies). A foreigner who committed the indicated offence can be subject to administrative detention<sup>30</sup> for the period of more than three hours, but for no longer than seventy two hours<sup>31</sup>. Consequently, in order to ensure administrative sanction in the form of deportation, prosecutor<sup>32</sup> can authorize detention of this person for the period required for deportation<sup>33</sup>. The law does not indicate the maximum term of administrative detention (however it cannot exceed three months, as far as here lies the difference between administrative detention and criminal sanction, i.e. arrest).

In 1999 decision was made in Belarus to establish *facilities for temporary placement of foreign citizens and stateless persons subject to deportation*, however such facilities have not been established as of now<sup>34</sup>. At present when detained, these persons are placed in temporary detention and reception centers of the Ministry of Interior bodies.

When decision on deportation is made, one also decides for how long this person will be banned from entering Belarus, where he or she will be deported and through which checkpoint at the Belarusian state border<sup>35</sup>.

The ruling on imposing an administrative sanction in the form of deportation is executed immediately. *One can appeal against this ruling* within five days by applying to superior public official or higher court<sup>36</sup> (and complaint is to be considered within three days after receipt). The ruling is subject to execution if appeal is denied<sup>37</sup>.

Let us note that *costs associated with deportation* are borne by the foreign citizen or stateless person subject to deportation, or by legal / physical persons who solicited his or her entry, stay or residence in the Republic of Belarus<sup>38</sup>. If this foreigner / solicitor refuses to cover expenses associated

(Contd.) \_\_\_\_\_

*Belarus or who lost documents that had been used to enter the Republic of Belarus according to the rules of the near-border transfers”*

<sup>29</sup> Exhaustive list of articles envisaging the possibility of deportation: Article 16.2 “Concealment of the source of the sexually transmitted disease or medical examination evasion”; article 23.24 “Violation of legislation on foreign gratuitous aid”; article 23.29 “Illegal crossing of the state border of the Republic of Belarus”; article 23.30 “Violation of the border regime”; article 23.31 “Violation of the regime of the state border of the Republic of Belarus”; article 23.32 “Violation of regime at the border checkpoints of the Republic of Belarus”; article 23.55 “Violation of the rules of stay in the Republic of Belarus, as well as the rules of transit through the territory of the Republic of Belarus”.

<sup>30</sup> In essence administrative detention of a physical person with regards to whom administrative procedure was initiated consists in ensuring short-term restriction of freedom for the committed administrative offence, in transferring this person to the body in charge of administrative procedure and in this person’s detention there (in the case under consideration – for the period of up to 72 hours). Consequently, if there are reasons to believe that this foreigner might evade from executing the ruling on deportation, deportation under escort is imposed, and if within 72 hours from the start of detention it is impossible to execute the ruling on deportation, then this person is detained for the period required for the deportation (based on prosecutor’s authorization)

<sup>31</sup> Article 8.4 of the Belarusian Code No. 194-Z of 20.12.2006 (version of 13.07.2012) “Code of Execution Procedure of the Republic of Belarus for administrative offences” (with amendments that entered into force on 05.09.2012)

<sup>32</sup> Prosecutor’s authorization cannot be appealed against

<sup>33</sup> Part 7 article 8.4 of the Code No. 194-Z of 20.12.2006

<sup>34</sup> Regulation of the Belarusian Council of Ministers No. 1592 of 15.10.1999 “On procedure of establishing facilities for temporary placement of foreigners and stateless persons subject to deportation”

<sup>35</sup> Part 4 article 11.9 of the No. 194-Z Code of 20.12.2006

<sup>36</sup> Article 12.4 of the Code No. 194-Z of 20.12.2006

<sup>37</sup> Article 13.2 of the Code No. 194-Z of 20.12.2006

<sup>38</sup> Part 2 article 20.2 of the Code No. 194-Z of 20.12.2006



with deportation, it is carried out at the expense of funds seized from the foreigner during administrative detention and (or) republic's budget<sup>39</sup>.

The ruling on deportation can be executed in two forms: 1) voluntary; 2) compulsory (under police escort).

It is noteworthy that *deportation is suspended* by the competent body, if the foreigner to be deported applies for refugee status, additional protection or asylum in the Republic of Belarus<sup>40</sup>. Application<sup>41</sup> is considered within 15 days, and if the authenticity of the data is established, detention of a person can be terminated (following the decision of a competent body), deadline for the final decision is 30 days.

#### 4.1.1 Voluntary deportation

This decision is made in the form of a ruling<sup>42</sup>, indicating the foreigner's departure period, that ought not to exceed thirty days from the date of the ruling. Foreigner, who was granted the right to voluntarily and at his or her own expense leave Belarus, is to identify the state, where he or she will go, and departure method. After documents are drawn up, travel documents necessary for departure are purchased and departure method is determined, foreigner within three days before the date of departure is obliged to notify the competent authority that made a decision to execute the ruling on voluntary deportation. When foreigner evades voluntary departure from the country within the period set in the ruling, the competent body undertakes measures to detain this person for the period required for execution of the ruling on deportation and does so on the basis of administrative detention protocol and prosecutor's authorization<sup>43</sup>.

#### 4.1.2 Compulsory execution of the ruling on deportation

In case when *the ruling on deportation is executed by force*, the competent body executing this ruling can file a request to the Belarusian Ministry of Foreign Affairs asking for assistance via diplomatic channels, in order for transit visas to be issued by diplomatic missions or consular offices of the relevant states. If the deported foreigner does not have the document for departure abroad<sup>44</sup>, the competent body executing the ruling on deportation files a request to the Belarusian Ministry of Foreign Affairs asking for assistance via diplomatic channels in obtaining of such a document within the shortest time possible<sup>45</sup>.

<sup>39</sup> Regulation of the Belarusian Council of Ministers No. 333 of 15.03.2007 (version of 31.05.2012) "On approval of the Regulation on procedure of deportation of foreign citizens and stateless persons"

<sup>40</sup> Article 20.4 of the Code No. 194-Z of 20.12.2006

<sup>41</sup> Let us note that according to article 37 of the Law No. 354-Z of 2008 such application is considered within the expedited procedure, as far as the law deems it improper (in case if foreigner:

1. had an opportunity to apply for protection, but did so only after detention for illegal crossing of the Belarusian state border or illegal stay in its territory;
2. filed an application for protection with a purpose to avoid deportation or expulsion from Belarus.

<sup>42</sup> Made by the competent body when there are no reasons to believe that foreigner might evade from executing the ruling on deportation

<sup>43</sup> Administrative detention cannot be appealed in court

<sup>44</sup> Passport or other document substituting it, meant for departure abroad and issued by authorities of the state of citizenship or customary residence or by an international organization.

<sup>45</sup> Or files such request directly to these diplomatic missions or consular offices if there are relevant agreements in place

When a foreigner who is a citizen of the state with which Belarus has visa regime of entry and departure is deported<sup>46</sup>, he or she is issued visa for departure from Belarus by the internal affairs body for the period required for execution of the ruling on deportation.

The person detained for the execution of the ruling on deportation is escorted<sup>47</sup> only until the he or she crosses the state border of Belarus<sup>48</sup>.

Let us also note that deportation of a foreigner leads to the reduction of the term of his or her temporary stay in Belarus and annulment of permit to temporarily reside in the country or permit to reside there permanently.

Deported foreigner can be banned from entering Belarus for the period from one year to five years (following the decision of a body that issued a ruling on deportation)<sup>49</sup>. Such foreigners are also included in the List of persons whose entry to the Republic of Belarus is forbidden or undesirable.

#### 4.1.3 Deportation of foreigners forcefully returned from the neighboring states

Let us also consider *the issue of return to Belarus of foreigners who illegally crossed the state border when departing from Belarus* to the neighboring states. Competent bodies of the neighboring states (Ukraine, Russia<sup>50</sup>, Lithuania, Poland, Latvia), having detained the trespasser in their territory, perform necessary checkups (for instance, establish the fact and circumstances of illegal arrival from the Belarusian territory), after which the detained foreigner is deported to the country he or she came from (in this case to the Republic of Belarus). Such foreigner is transferred by public officials of the neighboring state to the State Border Committee of Belarus. Subsequently this person is held administratively liable for illegal crossing of the Belarusian state border<sup>51</sup> and is deported<sup>52</sup> under police escort to the country he or she came to Belarus from (it is usually Russia). Deportation is carried out according to the procedure set forth in Regulation No. 333 of 2007<sup>53</sup>.

#### 4.2 Expulsion

Expulsion of foreigners from Belarus is not a punishment and is applied by interior affairs or state security bodies<sup>54</sup> in the interests of national security, public order, public morals, public health, rights and liberties of Belarusian citizens and other persons, if this foreigner cannot be deported (article 65 of the Law No. 105-3).

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<sup>46</sup> Departure visa is required, as far as if a foreigner (from a state with which there is visa regime) did not have a visa, then he or she had a right neither to enter nor to leave Belarus; otherwise de jure this foreigner commits an administrative offence – illegal crossing of the border, while departure is requested by government bodies. This visa is issued for the deported person to avoid this offence.

<sup>47</sup> Escort is carried out by officers of the competent body executing the ruling on deportation – border service bodies, internal affairs bodies, state security bodies of the Republic of Belarus.

<sup>48</sup> If this is coordinated with authorized agencies of the state where foreigner is deported, the deported foreigners can be transferred through state border checkpoints (with the exception of the Belarusian-Russian section of the border) with compulsory involvement of officers of the Belarusian border service bodies and of an authorized body of the state where foreigner is deported.

<sup>49</sup> Article of the Law No. 105-Z of 04.01.2010 “On legal status of foreigners and stateless persons in the Republic of Belarus”

<sup>50</sup> There is no state border protection regime at the border between Belarus and Russia

<sup>51</sup> According to article 23.29 of the Belarusian Code of Administrative Offences No. 194-Z of 21.04.2003.

<sup>52</sup> Article 23.29 of the Code No. 194-Z envisages deportation as a sanction for this offence

<sup>53</sup> Regulation of the Belarusian Council of Ministers No. 333 of 15.03.2007 (version of 31.05.2012) “On approval of the Regulation on procedure of deportation of foreign citizens and stateless persons”

<sup>54</sup> They make such decisions upon their own initiative or in response to request by the interested state agencies

Some categories of foreigners defined by legislation<sup>55</sup> can be expelled from Belarus only in the following cases: they create a threat to national security; they committed a criminal offence in Belarus that is considered a grave crime or a felony by the Belarusian Criminal Code.

As for foreigners, whose applications for protection were considered, who were denied the extension of the period of additional protection or whose refugee status or additional protection were annulled and who at the same time do not have legal grounds for stay in Belarus, they are obliged to leave Belarusian territory within fifteen days after being informed about the corresponding decision (part 1 article 53 of the Law No. 354-Z of 2008)<sup>56</sup>. They are to leave the territory of Belarus on their own and at their own expense. If it is impossible for them to return<sup>57</sup>, then they have a right to obtain permit for temporary residence in Belarus<sup>58</sup>.

When considering the issue of foreigner's expulsion, the competent body informs him or her about that<sup>59</sup>. Unlike deportation, in the course of decision-making about **expulsion**<sup>60</sup> foreigner is not subject to administrative detention and is to reside in the place of temporary stay<sup>61</sup>.

The issue of foreigner's expulsion can be resolved in his or her presence. In this case the foreigner has a right to offer explanations and provide information and documents clarifying the relevant circumstances<sup>62</sup>.

The ruling on expulsion can be implemented in one of the *two forms*: expulsion by way of voluntary departure<sup>63</sup>; compulsory expulsion.

#### 4.2.1 Expulsion by way of voluntary departure

Decision on expulsion of foreigner by way of voluntary departure is made, when there are no reasons to believe that this foreigner might evade executing such decision.

Foreigner who is to be expelled by way of voluntary departure can choose the state where he or she will go and the method of departure from the country. The ruling on expulsion indicates the time period within which the foreigner is obliged to leave the country<sup>64</sup>, period of banned entry to Belarus, timeframe and procedure of appeal against the ruling.

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<sup>55</sup> Foreigner applying for refugee status or additional protection in Belarus  
foreigner who was granted refugee status or additional or temporary protection in Belarus;  
foreigner consideration of whose application for refugee status or additional protection in Belarus was stopped;  
foreigner who was denied refugee status or additional protection in Belarus;  
foreigner who was denied extension of the period of additional protection in Belarus;  
foreigner who lost refugee status or additional protection in Belarus;  
foreigner whose refugee status or additional protection in Belarus was annulled.

<sup>56</sup> If they did not use the right to appeal this decision in court – if they did appeal, but without success, then within 15 days after the court ruling denying appeal enters into force

<sup>57</sup> When they are not willing to return to the territory of the state, where their life or freedom are in danger due to race, faith, citizenship, nationality, membership in a certain social group or political beliefs (part 1 article 5 of the Law No. 354-Z of 2008)

<sup>58</sup> Part 4 article 5 of the Law No. 354-Z of 2008.

<sup>59</sup> Foreigner is handed the corresponding notice

<sup>60</sup> Regulation of the Belarusian Council of Ministers No. 146 of 03.02.2006 (version of 31.05.2012) "On approval of the Regulation on procedure of expulsion of foreign citizens and stateless persons from Belarus and on declaring some regulations of the Council of Ministers of the Republic of Belarus deportation of such persons no longer in force"

<sup>61</sup> Address this person used for registration at an agency carrying out registration of foreigners who arrived in Belarus, and if he or she is present in Belarus without registration – in the place of temporary stay allowed by the competent body.

<sup>62</sup> All this is to be taken into account by the competent body when considering the issue of deportation

<sup>63</sup> In this case foreigner personally identifies the state where he or she is to go within the established period of departure and the method of departure.

<sup>64</sup> Maximum period within which foreigner is to depart is not to exceed thirty days.

After the documents are drawn up, travel documents necessary for departure from Belarus are purchased and departure method is chosen, within three days before departure date foreigner is obliged to notify the competent body that made a decision on expulsion by way of voluntary departure.

#### 4.2.2 Compulsory expulsion

If decision is made on *compulsory expulsion*, foreigner is subject to administrative detention<sup>65</sup>. He or she is to be immediately informed about the reasons for detention, his or her rights<sup>66</sup> and obligations<sup>67</sup>. Besides, in case of foreigner's request, this fact is to be reported to the Ministry of Foreign Affairs, in order to notify the diplomatic mission or consular office of the detainee's state of citizenship or customary residence<sup>68</sup>.

The ruling on compulsory expulsion indicates the period of banned entry to Belarus, the state where foreigner is expelled, and timeframe and procedure of appeal.

Foreigner subject to compulsory expulsion can be expelled to one of the following states: state of citizenship; state of customary residence; state from where the foreigner came to Belarus; state that expressed willingness to admit him or her; state requesting his or her extradition; state with which Belarus has an agreement on readmission.

Foreigner subject to compulsory expulsion is included into the List of persons whose entry to Belarus is banned or undesirable and he or she is banned from entry to Belarus for the period from one to ten years<sup>69</sup>.

*Expulsion can be suspended* if the foreigner applies for refugee status, additional protection or asylum in Belarus.

Foreigner subject to compulsory expulsion is escorted<sup>70</sup> through the checkpoint at the Belarusian state border until he or she crosses the border. The costs of compulsory expulsion are covered at the foreigner's expense<sup>71</sup> or at the expense of the petitioning person<sup>72</sup>.

If it is impossible for the foreigner to return, he or she has a right to obtain a permit for temporary residence in Belarus. Article 48 of the Law No. 105-Z of 2010 stipulates the following grounds for obtaining such a permit: impossibility of return or expulsion against the foreigner's will to the state, where his or her life or freedom are in danger due to race, faith, citizenship, nationality, membership in a certain social group or political beliefs or where he or she faces torture or if there is no state that would agree to admit the foreigner (status is granted for the period within which return or expulsion are impossible, but for no longer than one year (subsequently if the grounds are still there, then the period is extended for another year etc.)).

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<sup>65</sup> This decision is made by the competent body, it cannot be appealed.

<sup>66</sup> Among other things he or she is allowed to have meetings, have phone conversations at his or her own expense with representatives of diplomatic missions or consular offices of the state of citizenship or customary residence, communities, international organizations or their offices, relatives and other persons.

<sup>67</sup> It is important to note that detention is not applied to foreigners who did not reach the age of 16 or are over 60; who have obvious signs of disability; pregnant women.

<sup>68</sup> Within 24 hours from the day of detention.

<sup>69</sup> In exceptional cases the competent body can allow the deported foreigner to enter Belarus for the period of no longer than 30 days before the ban on entry expires.

<sup>70</sup> By officers of the Belarusian internal affairs or state security bodies.

<sup>71</sup> Foreigner has a right to contact at his or her own expense a diplomatic mission or consular office of the state of citizenship, a community, an international organization or its office, as well as relatives and other persons asking for assistance in covering the costs associated with his or her expulsion.

<sup>72</sup> In case of foreigner's or petitioning person's refusal (lack of funds) to cover expenses associated with expulsion, or in case of dissolution of the petitioning legal person or death the petitioning physical person, expulsion is carried out at the expense of funds confiscated from the foreigner during detention and/or at the expense of republic's budget.

**Readmission, Return  
and Reintegration: Belarus**

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*Socio-Political Module*



## Introduction

The goal of this note is to shed light on some aspects of migration processes in Belarus, including the state policy in this sphere, through the lens of policies on readmission and return.

First of all, it is necessary to explain the meanings of the main categories that are used further in this text as they slightly differ from the generally accepted definitions. Currently, as O.Bakhur observes, “questions of readmission are poorly developed at the legal level because of complexities of conclusion of bilateral international agreements” (Bakhur 2011: 6). Therefore, it is only possible to discuss the meaning of the process of readmission with regard to practice of those Belarusian agencies that are involved in the border protection from illegal migrants. In this context, readmission practically means the acceptance of a person from abroad in circumstances when this person has no legal status for continued presence in a foreign country. Generally speaking, readmission refers to three categories of persons: citizens of Belarus, citizens of third countries, and stateless persons (as long as they entered a foreign country via the Belarusian border). With regard to modern day Belarus, such practice only reflects the reality for the citizens of Belarus. Only these persons can return to Belarus, whether such return is voluntary or forced (i.e. on the basis of an EU administrative or judicial act). So, the term “readmission” in this text primarily refers to Belarusians, who return to Belarus from the EU countries, and not on the basis of EU acts, or readmission agreements, but on the basis of their Belarusian citizenship.

Return migration denotes the movement of people returning to the country of origin or habitual residence after staying abroad for a short period of time or several years. The definition here differs slightly from the general approach (Perruchoud & Redpath-Cross 2011: 85), according to which only people who have spent at least one year in another country will be considered as return migrants. There are no differentiated statistics in Belarus dealing with the number of days, months and years the return migrants have spent abroad. Therefore, ‘return migration’ refers to citizens of Belarus who have returned home, or to third country nationals who are leaving Belarus voluntarily, or are being removed from Belarus on the basis of Belarusian legislation.

The focus of this note is on irregular migrants, i.e. those persons who have either left Belarus without having a proper legal status (clandestine migration) or have lost this status after staying abroad for a longer period than authorized, or who have subsequently taken up unauthorized employment while being abroad. Therefore, for the purposes of this note, irregular migrants are those citizens of Belarus who have tried to enter or have entered another (host or transit) country and (a) have been captured by Belarusian border guards before crossing the border, or (b) have been returned to Belarus from the destination country by foreign police forces. As for third country nationals who try to cross the Belarusian border without legal documents, their actions are considered as violations of Belarusian legislation. Such migrants can be stopped at the border by Belarusian border guards or other services. If they are detained at the border by the Belarusian border control agencies, they will later be “returned back” from Belarus. In most cases, if they have arrived from Russia, they will be deported to the Russian state border and released, or handed over to the Russian police in the nearest Russian settlement. (This will be a case of “forced return”). If returned individuals are Russian citizens, they will be immediately released – as long as they have not broken the Belarusian legislation whilst staying in Belarus.

As stated in the literature, “there is no clear or universally accepted definition of irregular migration” (Perruchoud & Redpath-Cross 2011: 54). The approach in this note reflects the needs and the position of Belarus. From this perspective, the criteria for irregular migration include: either lack of a valid passport (or another travel document), or the violation of the administrative rules of Belarus for leaving the country (even in the case when these requirements can be viewed differently by the EU). This approach may differ significantly from the perspective of the receiving country whose primary concern would be

whether a migrant meets the legal regulations for entry, stay or work in the country of transit or destination. The interests of sending and receiving states may not always coincide.

### **Migration Policy Regulation in Belarus**

The Republic of Belarus is a specific case within the CARIM-East project with regard to its readmission policy. There are no agreements on readmission signed by Belarus either with the EU, or with any other country. All of the issues related to the policies of return of irregular migrants to Belarus are regulated by the existing Belarusian legislation on migration.

Belarusian migration policies are elaborated by state institutions and are mainly implemented by the Citizenship and Migration Department of the Ministry of Internal Affairs (MIA) of the Republic of Belarus. According to the declared policy goals of this Department, it is the major state body responsible for elaborating migration policy, implementing it, defending the state's interests in labor relations, preventing the country from the development of criminal activity related to migration, and regulating the employment of migrants in Belarus. The Department is subordinated in its activities to the upper level of authorities, represented on the highest level by the President of the Republic of Belarus and the Council of Ministers. Any important decision related to migration policy must be first approved by the highest level of power in Belarus. Thus, on December 31, 2010, the Council of Ministers issued an Act that approved the regulation on return of foreigners and stateless persons to the neighboring states in case they broke Belarusian laws or border-crossing regulations. Deportations and dispatches are made on the basis of this Act. According to MIA statistics, in 2012 alone, 1,036 foreigners were deported and 1,150 were dispatched from Belarus (in total, 24 persons more than in 2011). Some of them received entry bans for the future. All returnees were third country nationals. They were “returned” to the state border with Russia or Ukraine, depending on the point of entry. Statistics are not available on further details.

Another body involved in the migration policy implementation is the State Border Committee. In Belarus, the Ministry of Labor and Social Protection is much less involved in the regulation of migrants' employment than the Ministry of Internal Affairs or other state bodies.

### **Readmission Agreements**

As has been already mentioned, Belarus has signed no agreements on readmission. Consequently, no special programs on return and reintegration on the basis of readmission agreements have been implemented.

This situation indicates that until recently, the policy interests of the EU and the Republic of Belarus were divergent. Their only shared goal was the ‘soft security’ cooperation. Some other policy interests declared by the EU, such as human rights, were not officially followed by Belarus, being at the same time “an EU political precondition” for further negotiations. A few years ago, the EU did not have negotiations on readmission with Belarus. In November 2010, a Finnish politician Heidi Hautala stated in her evaluation of the EU's readmission policy with regard to Belarus: “Due to the human rights situation I wouldn’t support a readmission agreement with Belarus” (Hautala 2010). However, as a Russian expert on migration Oleg Korneev argues (Korneev 2012: 612), “it is important to distinguish between declared and actual policy goals of the partners.” In February 2011, the EU made a decision to open negotiations on agreements to facilitate the procedures regarding issuing of short-stay visas and on readmission between the European Union and Belarus (Melyantsou 2012: 1).

The official reaction of the Belarusian authorities was twofold, as the EU proposal combined two issues. On the one hand, as the press-secretary of the Ministry of Foreign Affairs Andrey Savinyh said to the BelaPAN media agency, the facilitation of visa regime “is still a priority” for the Belarusian state. On the other hand, he added, since the EU combined this issue with the preparation



of the readmission agreement, “this condition significantly complicates the decision” (BelaPAN 2011). In other words, the Belarusian authorities were ready to discuss the visa regime simplification separately from the readmission agreement. As a result, readmission policies of those third-country nationals who transited through Belarus to the EU remain uncertain. At present, they are not taken back to Belarus (no “return”).

Various comments have been made on this issue. As Leszek Sherepka, then the Ambassador of Poland to Belarus, explained at a press conference in Minsk, a Belarusian official had confidentially mentioned to him that the readmission agreement “was not a priority” for the Republic of Belarus (BelaPAN 2011). Another Belarusian official (also confidentially) mentioned that this was a “totally political issue” that depended on Russia. This remark makes sense, since Belarus and Russia are in a Union where migration policies are commonly formulated.

The reasons for the current position of Belarus on readmission are numerous and lie in the political and economic spheres. Firstly, Belarus is a transit country, so, potentially, many irregular migrants going to the EU through Belarus are third country nationals. In case of signing the readmission agreement with the EU, the Republic of Belarus would acquire the responsibility to re-admit all these irregular migrants from the EU. It will be necessary to provide these migrants with temporary camps, support them legally, provide them with travel documents, and so on, at the expense of the Belarusian budget. Currently, there are no such camps in Belarus, only points for asylum seekers. Establishing the camps (or centers) for readmitted migrants, as well as further improving the border infrastructure would require extra resources. President Lukashenko has repeatedly reiterated that the EU is not willing to pay Belarus for protecting the EU borders, while such protection is in the interest of both sides. In his Reuters interview (Interfax 2012) President Lukashenko said that 120,000 third country nationals who had attempted to enter the EU, were stopped in Belarus, while Belarus was not paid for this “service”. In 2012, in the Brest border district alone, according to the border guards’ report, 134 citizens of third countries (mainly from Asia and Africa) were detained for attempting to cross the EU border illegally (Government of the Republic of Belarus 2012). In such cases, Belarus takes responsibility for these persons as they are captured on the territory of Belarus.

Secondly, as Belarus does not have readmission agreements with the countries of origin of potential migrants, there is no legal basis for returning the third country citizens (if they are returned to Belarus as a country of transit) to their home countries. Therefore, Belarusian authorities do not want to take responsibility for all irregular migrants who might be seized in the EU. According to them, the maintenance of the migration regime in Belarus is a burden for the state budget. Media press service of the Belarusian State Border Committee stated that the state spends 4,5 euro on protection of one meter of state border with the EU, while the EU spends 25 cents. Annually, Belarus receives for these purposes 7 million dollars from the EU as a form of international technical help, while the state spends 125 million dollars on border protection annually (Korovenkova 2012). Additionally, Belarus spends part of its state budget on the monitoring of migrants and the maintenance of regulations inside Belarus. According to the Belarusian State Border Committee, in 2012 alone, 15,000 foreigners were involved in infringement of migration legislation and an additional 6,400 were guilty of offences at the border territory (Korovenkova 2012). Many were detained and deported from Belarus at the expense of the state.

Thirdly, although the simplification of visa regime that the EU wants to discuss together with the readmission issue is among the declared priorities of the Belarusian authorities, some direct consequences of visa simplification may be against the state economic interests. As some observers notice (Visavsem 2011), if the costs of the EU visa for the Belarusians decrease, then the costs of a Belarusian visa for the EU citizens must also decrease. As a consequence, the state budget will lose money. Also, given the income difference between Belarus and the EU, many Belarusians would consider the possibility of leaving the country and finding employment abroad, if visas were not an issue. Therefore, for the state, the visa regime simplification and readmission agreement may bring certain negative consequences: the country may lose part of its population, while the state budget may lose money currently accrued from visas.

Considering that ‘multivectoral cooperation’<sup>1</sup> with the Russian Federation is proclaimed as one of the main principals of national foreign policy, it is not impossible that Russia played a role in the uncertain state of affairs with regard to readmission agreements in Belarus. No official information on the preparation of the readmission agreement between Russia and Belarus was available until 2012. In late 2012, after Russia had signed the readmission agreement with Ukraine and encouraged the “visa-free talks” with the EU, the information appeared in the media that the preparation of the readmission agreement between Belarus and Russia had started. Along these lines, in late November 2012, Aleksei Begoun, the head of the Citizenship and Migration Department, told the BelTA reporters that negotiations on the readmission agreement with Russia are almost complete: “We have almost completed the process of negotiations on the readmission agreement with Russia. Belarus will also continue negotiating with other countries. As a result, we will get an effective mechanism countering illegal migration with other countries” (BelTA 2012). On the basis of this news, one may assume that the agreement can be signed in 2013. After it becomes a reality, the Republic of Belarus may start the negotiations with the EU on a similar agreement. However, there is no official information in this regard.

Additionally to the news on the preparation of readmission agreement between Russia and Belarus, it was announced that the readmission agreement between Belarus and Turkey is almost ready to be signed (BelTA 2012). This is also important, taking into account that Russia has an agreement with Turkey that ensures that all irregular migrants who crossed the border from Turkey can be sent back.

To summarize: although there are no readmission agreements and therefore no special return and reintegration programs for those irregular migrants who are returned from the EU, other CARIM-East states or the third countries, there is some progress in the preparation of the readmission agreements with Russia and some other states, though not yet with the EU member states.

### **Policies with regard to accepting / returning irregular migrants**

According to a private interview with an official from the Ministry of Internal Affairs on 27.11.2012, the current practice between Belarus and the EU countries is the following: the Belarusian migration service re-accepts the irregular migrants if they are citizens of Belarus. In such cases this procedure is regulated by the existing rules or legislation of Belarus. They are provided with reintegration and rehabilitation programs only if they are trafficking victims.

If migrants are citizens of other countries, the approach depends on the circumstance, namely, where exactly the persons were detained – on the Belarusian border or on the territory of the EU member state. Only in the first case does Belarus take back the citizens of third countries. Meanwhile, the majority of irregular migrants crossing the Belarusian-EU borders are not citizens of Belarus. For example, according to the Lithuanian border guard service statistics, in 2012, 426 out of 445 detained infringers of the Lithuanian-Belarusian border were non-Belarusian citizens: 269 of them were Georgians, 85 Vietnamese, 54 Afghans, 36 Russians, and 11 Lebanese (Government of the Lithuanian Republic 2013). In addition, 1,546 persons, who tried to cross the border officially from Belarus, were not allowed to enter the Lithuanian Republic, amongst them 1,065 citizens of Belarus and 790 citizens of Russia (in most cases, they did not have a proper visa). Belarusians were not detained in Belarus as they had not broken the Belarusian legislation but were merely stopped at the border and turned back.

In case of Russian citizens, it is not an issue of acceptance by the Belarusian service: if they are detained as irregular migrants in the EU, the citizens of Russian are returning back to Russia within the framework of the readmission agreement between Russia and the EU.

There are cases of abuse of the facilities of voluntary return programs in the EU by some citizens of Belarus. As Euroradio reported, in 2012, the Netherlands and Norway announced that they had

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<sup>1</sup> *The Main Principals of National Foreign Policy*. Official internet-portal of the President of the Republic of Belarus. Available <http://www.president.gov.by/press23865.html>, accessed 13.02.2013.

stopped paying money to Belarusians who had applied for asylum status and were rejected because they abused the legislation: many of them returned home as soon as they received money, without inquiring about the official decision on their status (Euroradio 2012). It means that some Belarusians formally seek asylum while really seeking easy money, as they cannot earn such an amount (2000-3000 euro) in Belarus so quickly.

Currently, special policies of acceptance (return) of irregular migrants to Belarus need to be yet elaborated, particularly for cases when the EU deports citizens of Belarus. There is no agreement (or practice) of information on the part of the Belarusian migration service regarding this matter, and therefore there are no available statistics in Belarus.

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**Return, Readmission and  
Reintegration of Migrants.  
The Case of Moldova.**

**VLADIMIR GANTA**

*Demographic and Economic Module*





## 1. Forced return

The Republic of Moldova has one of the highest shares of remittances in GDP terms, in the world<sup>1</sup>. Currently, on average, at any moment of the year, about 300,000 persons aged 15-64 years work or search for work abroad<sup>2</sup>. From 2000<sup>3</sup> to 2011 this number increased, on average, by 8% yearly. The highest rates were registered from 2000 to 2003, when the numbers stood at more than 25% yearly.

When in that period the poverty rate was about 70%<sup>4</sup> and the average monthly salary offered by employers was about 35 EUR<sup>5</sup>, many Moldovans decided to risk labour migration.

At that time, for Moldovans, traveling to countries, other than CIS<sup>6</sup> countries proved very difficult, in terms of the financial resources needed and the legal requirements to fulfill, especially if trying to find a job abroad.

Usually, labour-migrants were going to non-CIS countries as tourists, members of sport teams, religious or cultural groups, etc. using valid short-term visas. They were staying in destination-countries even after the expiration of their visas. Other labour migrants were traveling with false visas or even traversing borders in forests, at river crossings, etc.

In these conditions many Moldovan labour migrants were removed from the non-CIS countries, especially EU countries.

Unfortunately, till 2006 only the administrative records on the distribution of migrants by destination-countries are available. According to these data about 70% of migrants were going to Russia, Ukraine and Belarus. About 13% of Moldovan migrants went to Germany. Another important destination-country was the U.S. (about 13% of migrants)<sup>7</sup>. Administrative data cover only the emigrants that go abroad for residence.

### 1.1. Forced return from the EU

According to data available from Eurostat, in 2002 there were about 21.4 thousand Moldovan citizens in the EU, most of them in Germany (65%) and Romania (24%).

In the same year, 2383 Moldovans were removed from the EU area, mostly from Germany (49%), Czech Republic (14%), Hungary (14%) and Poland (9%).

In 2011, the number of Moldovan migrants in the EU and their distribution by countries changed significantly. Most of 191 thousand migrants, were in Italy (69%). The number of Moldovans removed from the EU decreased to 1860, most of them were removed from Romania (34%) and the United Kingdom (14%).

The decrease of the number of Moldovans removed from the EU was influenced mainly by two factors:

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<sup>1</sup> World Bank Bilateral Migration matrix, available at [www.worldbank.org/prospects/migrationandremittances](http://www.worldbank.org/prospects/migrationandremittances).

<sup>2</sup> Labour Force Survey estimate for 2011.

<sup>3</sup> Labour Force Survey is the only source offering continuously estimates of the number of labour migrants. The survey was launched in 2000. Before 2000 only administrative records of migration flows are available.

<sup>4</sup> National Bureau of Statistics

<sup>5</sup> National Bureau of Statistics

<sup>6</sup> Commonwealth of Independent States (11 country, former members of the USSR).

<sup>7</sup> Data computed using administrative records of yearly flows of migrants:  
[http://statbank.statistica.md/pxweb/Dialog/varval.asp?ma=POP0704\\_en&ti=Emigrants+by+country+of+destination%2C+sex+and+age+group%2C+2001%2D2011+&path=../Database/EN/02%20POP/POP07/&lang=3](http://statbank.statistica.md/pxweb/Dialog/varval.asp?ma=POP0704_en&ti=Emigrants+by+country+of+destination%2C+sex+and+age+group%2C+2001%2D2011+&path=../Database/EN/02%20POP/POP07/&lang=3)

- Authorities of destination-countries recognized that labour migrants are already an indispensable, necessary component of the society and sending them back home is not a solution. Consequently, many Moldovan labour migrants used the opportunities offered by the Governments to legalize their stay. For example in 2008, in Italy<sup>8</sup>;
- Many Moldovan labour migrants used their right and regained the Romanian citizenship, which offers the right to freely move across the EU<sup>9</sup>;

Still, according to a survey conducted in 2008, about 33% of Moldovan labour migrants in the EU were staying illegally. Migrants say that if not making troubles, authorities don't take actions to remove the person, especially if the person works in specific activities (ex. taking care of elderly).

In 2007 Moldova signed an readmission agreement with the EU. Within this agreement 110 Moldovan citizens were readmitted in 2010, 126 in 2011 and 41 in 2012.

## 1.2 Forced return from the U.S.

According to the U.S. Department of Homeland Security only 8 Moldovans<sup>10</sup> were removed from the U.S in 2002. This number increased to 60 in 2011. Removals increased suddenly from 16 in 2007, to 45 in 2008. There are no additional data, but most probably it's about students traveling to the U.S. within work and travel programs. About 20% of them, according to the U.S. embassy in Moldova, do not return and choose to stay illegally in the U.S.

## 1.3 Forced return from Russia

Data on removals from Russia are more difficult to find. Given the fact that having a valid passport and a train ticket, Moldovans could travel to and stay in Russia freely, the number of Moldovans removed from Russia couldn't be high.

Of course, Russian immigration law imposes some restrictions for citizens of CIS countries. But in the beginning of 00's the law was less restrictive and as labour migrants tell, like in any post-communist country, those whose duty was to make the law work, used it mostly for personal gain. In these conditions, most Moldovan labour migrants were paying to policemen to avoid removal<sup>11</sup>.

Today many labour migrants still pay to avoid removal from Russia, mainly those working as employees. Usually the employer pays a bribe to the officer of the Federal Migration Service.

According to migrants there's also another, indirect, way of paying to avoid removal. For a fee, an employee of the railway company could pass the migrant's passport through the custom service and get the stamps that prove that the migrant, after staying three months in Russia, left and returned legally, therefore having the right to stay other three months.

Of course, while the passport travels, the migrant works in Russia.

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<sup>8</sup> In 2008 the number of valid permits issued to Moldovan citizens was 103 thousand, in 2009 it was 34% higher (Eurostat data).

<sup>9</sup> According to a Soros Foundation Romania study, about 227 thousand Moldovan citizens regained the Romanian citizenship between 1991 and 2011

<sup>10</sup> Source: U.S. Department of Homeland Security. Deportable Alien Control System (DACS), Enforcement Case Tracking System (ENFORCE), July 2007.

<sup>11</sup> Unfortunately there are no empirical data to support that.

Given the high degree of informality on the labour market<sup>12</sup> and corruption in Russia<sup>13</sup> it's expected that administrative records on removals from Russia shouldn't give high numbers of Moldovans forced to return home.

## 2. Voluntary return

When speaking about return of migrants back to Moldova, two groups of migrants should be considered: the one of repatriates and the one of labour migrants.

For repatriation can apply citizens of Moldova who emigrated for permanent residence abroad, their descendants, or non-Moldovan citizens who lived continuously at least 10 years in Moldova. These persons have the right for permanent residence in Moldova.

Yearly, according to administrative records, between 2000 and 2011, on average about 1460 repatriates were registered. Most repatriates came from Russia (53%) and Ukraine (32%).

Unfortunately, the available data don't offer the possibility to see how many of them are those who left Moldova and returned back and how many are simply descendants of Moldovan citizens who decided to settle in Moldova.

Labour migrants are a numerous sub-group of population, about 300 thousand Moldovans (9% of total population), on average, work abroad at any given moment. Most of them work in Russia (65%) and Italy (18%).

Traveling from Moldova to Russia and back is affordable (50-90 Euro one-way ticket) and most of all Moldovans don't need visas. According to Russian law, Moldovan citizens can stay legally on the Russian territory for no more than three months and in some conditions for one year.<sup>14</sup> Consequently, all Moldovan labour migrants have to return. But there are several ways to avoid traveling to Moldova every three months (see the previous chapter).

Still, it's hard to imagine that there are many Moldovans who don't return from Russia at least once per year. About half of labour migrant working in Russia could be considered circular migrants<sup>15</sup> who come to Moldova periodically, mostly in autumn and winter.

Returning from the EU is more difficult and more expensive. Returning to Moldova is reasonable for labour migrants who stay legally in the EU. Those staying illegally risk to be removed without a chance to return back to their jobs. Although, even in these cases there are ways to return to Moldova, then back to the EU (ex. using the "white passport"<sup>16</sup>).

An estimated number of 18 thousand labour migrants working in Italy could be considered circular migrants (31%). Usually, they come to Moldova in August, during vacation.

A labour migration survey conducted in 2008, estimated a number of 72 thousand returned migrants (23% of all labour migrants). About 25% of returned migrants came to Moldova for vacation, 19% to make some documents, 17% for family-related reasons and 13% for health-related reasons.

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<sup>12</sup> According to the ILO, the share of persons employed in the informal sector, in non-agricultural activities is about 12% (2010 estimate).

<sup>13</sup> Transparency International: Corruption Perception Index in 2011 was 2,4 (rank 143 of 182)

<sup>14</sup> Except for high-skilled workers. They can stay there for up to three years.

<sup>15</sup> Estimated based on LFS panel data (2010).

<sup>16</sup> The migrants go to the consulate in the countries they work in, claiming that they lost their passport. They receive a document that allows travelling to Moldova. In this way, they avoid deportation and interdiction to re-enter the country.

Only 6% of returned migrants returned to Moldova because they achieved their goals and they wanted to return.

### 3. Reintegration of returned labour migrants

In 2008, the above mentioned labour migration survey estimated that 20% of returned migrants had no intentions to go abroad, for work, again. On average these migrants were 37 years old, mainly men (69%), mostly from Russia (71%) and Italy (10%).

At the moment of the survey the employment rate of returned migrants with no intentions to go abroad was 45%: higher than for returned migrants willing to go abroad (23%) and slightly lower than the national average for persons aged 15 years and over (47%).

The unemployment rate was 15%, much higher than for returned migrants willing to go abroad (5%) and the national average (3%).

These figures clearly indicate that returned labour migrants, once decided to stay in Moldova, actively try to reintegrate into the labour migrant.

The high unemployment rate also indicates that unemployed returned migrants either find more difficult a job or are more selective during job-search (trying to find a better-paid job).

On average, returned migrants working as employee were yearning a salary 20% lower than the national average. Again, this could mean two different things: either returned migrants are more desperate to get a job and accept a lower salary or they accept lower-paid jobs (with are easy to get) because they have savings or receive remittances from a household member.

The Government in partnership with international organizations implemented a program to support returned migrants who would like to start a business<sup>17</sup>. Migrants are assisted to invest their skills and savings. The program informs the migrants about its advantages, trains them and offers 50% of the money needed to start/develop a business. The name of the program stands from the idea that for each Leu<sup>18</sup> of remittances invested by migrants, the Government will offer an additional Leu. In 2011 the program assisted 73 projects, offering about 1.1 million USD. Unfortunately, not many migrants apply, they prefer to return abroad to running a business in Moldova. Buying apartments or building houses is considered a more secure investment.

Besides economical integration, returned migrants (mainly those returned from the EU) have to get used back with the daily life in Moldova. Most disturbing for them is the high degree of informality: there are clear rules/procedures on how to interact with institutions/organizations but in many cases these rules/procedures stay only on paper.

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<sup>17</sup> „PARE 1+1” governmental program, <http://www.odimm.md/ro/pare/default.htm>

<sup>18</sup> Currency in Moldova (MDL)

**Return, Readmission and Reintegration:  
the Legal Framework in the  
Republic of Moldova**

**TATIANA CIUMAS**

*Legal module*



## 1. Readmission agreements

On 10 October 2007 in Brussels the Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorization was signed. This agreement, then, entered into force on the 1 January 2008<sup>1</sup>. The objective of the Agreement was to strengthen cooperation in order to combat illegal immigration more effectively. The Agreement establishes obligations for both the Republic of Moldova and the European Community regarding the readmission procedure for own nationals, third-country nationals and stateless persons, transit, escort procedure and responsible authorities.

On 28 August 2008 the Republic of Moldova officially initiated negotiations for signing implementation protocols based on the Government Decision no. 1002<sup>2</sup>. Under Article 19 of the 2007 Agreement, Moldova signed implementation protocols with: the Czech Republic on 29 November 2011 (in force since 17 January 2012)<sup>3</sup>; Estonia on 1 December 2009 (in force since 10 May 2010); Lithuania on 29 September (in force since 6 December 2011); Poland on 11 October 2012; Romania on 25 March 2010; Hungary on 19 February 2010; Slovakia on 13 May 2010; Germany on 21 September 2010; Austria on 25 September 2010; Latvia on 1 October 2010; Bulgaria on 16 November 2011; Malta on 24 January 2011 (in force since 4 April 2011); and the Benelux on 28 January 2013.

The agreements signed with Italy and Norway, respectively, on 3<sup>rd</sup> July 2002 and 31<sup>st</sup> May 2005 are in force. According to the Joint Declaration concerning Norway, the Republic of Moldova is to bring into conformity the aforementioned agreement with the terms of the Agreement signed in 2007 with the EC. As to the Agreement signed with Italy it is important to mention Article 12 which delegates competences to the ministries of internal affairs of Moldova and Italy. These must elaborate the list of authorized border crossing points for readmission or transit and the list of airports for the purpose of transit for foreigners to their country of destination. As regards the readmission procedure, according to Article 20 of the 2007 Agreement with the EC the provisions of that treaty shall take precedence over the provisions of any other agreement on readmission if the provisions are incompatible with those set down in said treaty.

Moldova also signed the Agreement and implementation protocol with: Switzerland<sup>4</sup> on 19 May 2010, following the joint declaration under the Agreement of 2007; and with Denmark on 20 March 2011 (in force since 1 September 2011).

The Republic of Moldova signed Readmission Agreements with: Macedonia on 31 October 2008 (in force since 10 September 2009); with Serbia on 5 May 2001; Montenegro on 17 May 2012; and Bosnia and Herzegovina on 17 May 2012. The general content of these agreements is the same as the content of the above mentioned agreement with the European Community.

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<sup>1</sup> Council Decision 2007/826/EC, 8 November 2007, on the conclusion of the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas (OJ L 334 of 19 December 2007, p. 168)

<sup>2</sup> Government Decision for the initiation of negotiations over the draft intergovernmental Protocol regarding the implementation of the Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorization, signed at Brussels, 10 October 2007, published in Monitorul Oficial no. 167-168, 5 September 2008

<sup>3</sup> Protocol between the Government of the Republic of Moldova and the Government of the Czech Republic on implementation of the Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorization

<sup>4</sup> Agreement between the Republic of Moldova and Swiss Federal Council on readmission of persons residing without authorization

Moldova signed a readmission agreement with Ukraine on 11 March 1997 on the take over and return of persons at the Moldavian-Ukrainian border, concentrating on ensuring state security while safeguarding the state borders (Article 1). In June 2012 negotiations were initiated for signing a new readmission agreement.

On 1 November 2012 Moldova signed a readmission agreement with Turkey in order to strengthen cooperation over irregular migration. The Agreement also established rapid and effective procedures for the identification and safe and orderly return and admission of persons provided for by the Agreement (preamble).

At present Moldova is negotiating agreements and implementing protocols with other countries, including Albania and the Russian Federation.

## 2. Return from Moldova

### *Terms used in national legislation*

Law no. 200 on the Regime of Foreigners in the Republic of Moldova of 16 July 2010<sup>5</sup> partially transposed European legislation here, as mentioned in the preamble of the Law.<sup>6</sup> This included the Directive 2008/115/CE of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

Article 3 defines several terms that are important to define in this context:

**Illegal stay:** the presence of a foreigner on the territory of the Republic of Moldova, who fails to meet or no longer meets the terms of entry, stay or residence in the Republic of Moldova.

**Return:** a foreigner's return by voluntary or forced execution of the decision on return: to the country of origin, to a transit country in compliance with readmission agreements or to a third country to which the foreigner voluntarily decides to return and in which the latter shall be admitted.

**Removal:** execution of the decision on a foreigner's return, namely, the physical transportation of the latter outside the territory of the Republic of Moldova.

At the same time other relevant provisions can be identified in the legislation of the Republic of Moldova. Thus the Contravention Code of the Republic of Moldova<sup>7</sup> defines, in Art. 40(1), expulsion (Expulzarea (Ro) and Выдворение (RU)) as forced removal of foreign citizens or stateless persons who violated residence rules from the Republic of Moldova. Expulsion is aimed at removing a state of danger and to prevent such persons committing socially dangerous acts. According to the Law on the regime of foreigners the right of residence of the foreigner ceases from the moment the expulsion measure has been given<sup>8</sup>. Although the present Code does not define "a state of danger", it enumerates administrative offences where expulsion could be applied as an additional measure.<sup>9</sup> It also set out relative offences relating to the activity of the foreigner on the territory of Moldova: for example, admission of a minor to work places, endangering his/her life and health; or attracting minor to works which present danger to his/her life and health (Article 58); violation of the border regime rules and

<sup>5</sup> Published in Monitorul Oficial no. 179-181 of 24.09.2010, in force since 24.12.2010.

<sup>6</sup> <http://www.carim-east.eu/2760/law-on-the-regime-for-aliens-in-the-republic-of-moldova/>

<sup>7</sup> Of 24.10.2008, published in Monitorul Oficial no. 3-6 of 16.01.2009, in force since 31.05.2009

<sup>8</sup> Article 62 para. (2).

<sup>9</sup> According to Article 40 para. (2) this measure is applied when committed the types of offences set in Articles 58, 67 para. (4)- (5), art.76, 80, 81, 83, 84, 87, 323, 324, 326, 328, 330-333, 339, 348.



rules of crossing state border (Article 331); violation of the staying rules in the Republic of Moldova (Article 333), etc. If the expulsion accompanies administrative detention, it will be conducted only after the execution of the administrative arrest.

The Penal Code of the Republic of Moldova<sup>10</sup> refers to expulsion as a measure aiming at the elimination or prevention of criminal deeds. In accordance with Article 105 para. (1) expulsion is a measure applied when a foreign citizens or a stateless person has been convicted of committing certain crimes. It is of the competence of the court to apply this measure at the request of the Bureau of Migration and Asylum. But the right to respect for private life is to be taken into consideration when deciding upon expulsion (para. 3). If expulsion accompanies imprisonment, the enforcement of the expulsion takes place after sentences have been served. According to Article 63 para (1<sup>1</sup>) of the Law on the regime of foreigners stateless persons legally staying on the territory of the Republic of Moldova cannot be expelled, save in cases of national security or public order. It should be mentioned that the Republic of Moldova ratified the Convention related to the status of stateless persons in 1954 with reserves as regards expulsion, applying national legislation to the expulsion of stateless persons.

According to Article 4 para. (2) of the Law on the regime of foreigners, “During their stay or residence in the Republic of Moldova foreigners must observe the legislation of the Republic of Moldova and be subject to control of the competent authorities according to law”. Foreigners are obliged to leave the territory of the country upon expiration of the period of residence; otherwise they will be removed from the territory if their stay becomes illegal. At the same time, the sanctions imposed by the legislation in force are sometimes related to national security, public order and public health.

According to Article 51 of the Law on the regime of foreigners in the Republic of Moldova and Point 4 of the Regulation on return, expulsion and readmission procedures of foreigners from the territory of the Republic of Moldova<sup>11</sup>, the return measure will be applied to foreigners:

- who entered illegally to the territory of the Republic of Moldova;
- whose stay became illegal;
- whose visa/residence right was cancelled or revoked;
- who were denied the extension of a temporary residence right;
- whose permanent residence right has ceased;
- whose application for recognition of stateless status was rejected, the procedure ceased or the stateless status was cancelled;
- who are former asylum seekers or whose refugee status or humanitarian protection was cancelled.

### *Return procedure*

According to Point 5 of the aforementioned Regulation the burden of examining all the circumstances of the case, including expenses for removal, evaluation of the foreigner’s state of health, application of readmission or bilateral agreements etc. is given over to the officer in charge before the return

<sup>10</sup> Of 18.04.2002, published in Monitorul Oficial no. 72-74 of 14.04.2009.

<sup>11</sup> Approved through Government Decision no. 492 of 07.07.2011, published in Monitorul Oficial no. 114-116 of 15.07.2011. The Regulation establishes the return, expulsion, and readmission procedures from the territory of the Republic of Moldova, in accordance with the rights and freedoms guaranteed by the Constitution of the Republic of Moldova and other laws, as well as by the international treaties to which the Republic of Moldova is a party, with the exceptions established by the legislation in force (Point 1).

procedure is initiated.<sup>12</sup> According to Point 14 of the Regulation when removing someone from the territory of the country the officer<sup>13</sup> in charge will examine each case separately. He will be particularly attentive to the physical and medical condition of the foreigner, technical reasons, lack of transportation and any difficulty in identifying the person. In this case removal can be postponed until the circumstances that prevent this are removed. The Regulation does not expressly provide for how long the officer in charge can postpone removal, but the last remedy is to take the person to the court and place him/her under public custody. According to Article 3 of the Law on the regime of foreigners, public custody is a measure which limits freedom of movement.

After examining return cases, the Bureau of Migration and Asylum (which is the competent authority for foreigners) issues a return decision. This is an administrative act which determines a foreigner's stay as illegal and obliges him/her to leave the territory of the Republic of Moldova within a settled period of time (Arts. 3, 52 of the Law on the regime of foreigners).

Point 11 of the Regulation sets the timeframes for voluntary departure as follows:

- Maximum 5 calendar days for foreigners whose visa was cancelled, entered illegally to the Republic of Moldova or whose stay became illegal;
- 30 calendar days for foreigners to whom the prolongation of the residence right was rejected or where this right was cancelled or revoked;
- 3 months for foreigners who must close an investment (enterprise);
- 15 calendar days for former asylum seekers.

These terms are calculated from the date the foreigner was informed about the return decision.

The return decision is issued in the state language and in a language of international circulation understood by foreigner, or translated via an authorized translator, and offered to the foreigner under signature. If it is not possible to give the decision under signature, it will be delivered to the relevant address and posted at the authority's address (including on the website): Point 19 of the Regulation and Article 53 of the Law on the regime of foreigners. Thus the authority ensures that the foreigner has access to the information and fair treatment: the process of removal can thus be judged as being transparent.

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<sup>12</sup> According to Point 5 of the Regulation, before the return procedure is initiated, the officer in charge or the case must take into consideration the following points:

- 1) correct application of the national legislation;
- 2) if the foreigner accepts or not removal and expresses his/her intention to litigate the return measure;
- 3) If the foreigner has or not financial means necessary for removal;
- 4) the question of whom will support the expenses for removal of the foreigner: the natural person or legal person who invited the foreigner;
- 5) who will support the expenses for the removal of foreigner: employer, natural person or legal person, including the situation when the foreigner was hired illegally or where their resident permit is no longer valid;
- 6) there is the risk of avoidance;
- 7) if detention is necessary in the process of preparing return or in the process of removal, if the application of less coercive measures is enough;
- 8) there are no obstacles for the removal of foreigners;
- 9) there are no vulnerable persons;
- 10) the state of health of the foreigner allows removal;
- 11) are there or not sufficient elements for the readmission of the foreigner by a third country within readmission agreements or other bilateral agreements.

<sup>13</sup> Here is meant the officer in charge working at the bureau of migration and asylum within the specialized division in charge for fighting against illegal migration.

The term of voluntary departure may be prolonged by the Bureau of Migration and Asylum if there are circumstances relating to family or social aspects (Point 12 of the Regulation). It is not prolonged if there is the risk of absconding or if the foreigner presents a threat for public order and national security (Point 13). The Regulation does not state the relevant actions to be considered under point 13, leading to a subjective interpretation by the officer in charge.

At the same time it is not impossible that a former asylum seeker will apply for asylum again on the last day of the period set in the return decision. In this case the Bureau of Migration and Asylum will examine the case under the provision of the Law on asylum in the Republic of Moldova. During the period of time when granting access to asylum procedure is being examined the foreigner has the right to stay on the territory of the Republic of Moldova: Article 79 para. (2) of the Law on asylum. If the asylum application is rejected by a final decision then the return decision will be executed.

The Law on the regime of foreigners grants the right to appeal the return decision in the court within 5 working days after the decision has been communicated. It is important to mention that the right to appeal does not have a suspensive effect on the return decision execution. The burden of proving, before the court, the need to suspend the execution is put on the claimant (Article 54).

The Law on the regime of foreigners in the Republic of Moldova granted the right to establish prohibitions of entry (Entry ban) on the Bureau of Migration and Asylum and the Department of Border Police. This competence was maintained by the border police even after the reform and transfer of the Border Guards Service to the Ministry of Internal Affairs starting with 1 July 2012. The Law on foreigners distinguishes the situations when these prohibitions are applied, namely:

- cases when the foreigners are returned are under the competence of the Bureau, and
- cases when foreigners who left the Republic of Moldova after the date when his/her residence became illegal and the person is not returned are under the competence of the Border Police Department (Article 9 para. (1)).

The general rule set in the Law on foreigners is that prohibition of entrance cannot be applied to foreigners who have common minor children or children unable to work with persons who domicile on the territory of the Republic of Moldova. At the same time these foreigners will not be excluded if they have committed crimes with intention, serious crimes, especially serious crimes or extremely serious crimes on the territory of the republic of Moldova.

The law allows the authorities to apply the prohibition too in cases when:

- International organizations to which the Republic of Moldova belongs or public authorities dealing with fighting against terrorism let it be known that a foreigner finances, prepares, supports in any manner or commits acts of terrorism;
- There are indicators that the foreigners is a member of transnational organized criminal groups or that he/she supports the activity of these groups in any manner;
- There is evidence proving that he/she has committed or has taken part in committing crimes against peace and humanity, war crimes or crimes against humanity provided in the international treaties the Republic of Moldova is a party to;
- He/she presented false data when filling in documents for entry into the Republic of Moldova (Article 8 para. (1) let. b)-e)).

The Legislation also establishes prohibitions on entry for a period of up to 5 years and 10 years in cases where public order or national security are affected, the terms being in line with the EU Return Directive. It should be mentioned that in the case of foreigners who illegally resided in the country or performed illegal labour activity and who requested voluntary return, the period of prohibition shall be reduced by half.

### *Assisted voluntarily return*

Foreigners present on the territory of the Republic of Moldova who do not have the necessary financial means may appeal to the Bureau of Migration and Asylum for assistance in their return to the country of origin: article 61 para. (1) of the Law on the regime of foreigners. Alternatively, they can address themselves directly to national/international organizations (point 44 of the Regulation), as in case of International Organization for Migration. The only condition is that foreigners can apply for this assistance only once and on an individual basis: Point 45 of the Regulation.

### *Removal*

The Law on the regime of foreigners examines two aspects: namely removal under the escort; and removal based on readmission agreements. Removal under escort is performed by special personnel from the Bureau of Migration and Asylum and means escorting the foreigner to the crossing point of the state border or to the country of origin/transit/destination (Point 22 of the Regulation). This type of removal is conducted in case of foreigners:

- who did not leave the territory of the Republic of Moldova voluntarily upon the expiration of the return decision. Not all foreigners have this time for voluntary departure. For example, persons declared *persona non grata* are excluded from this possibility;
- who illegally crossed the state border;
- who have been declared *persona non grata*<sup>14</sup>;
- against whom the expulsion measure was disposed;
- who have physical or mental disabilities;
- who present a threat for public health.

If all the formalities are in place (documentation, available sufficient financial means (including travel costs)) removal is conducted in 24 hours. If the formalities are not in place the person will be taken under public custody and placed in the Center for Temporary Placement of Foreigners, where he can stay from 30 days up to 6 months depending on the court decision.

Any removal based on readmission agreements is conducted by the Bureau of Migration and Asylum following the agreements' provisions and implementing protocols. The authority examines both readmission and transit requests. Thus the Republic of Moldova may allow that the territory to be transited by a foreigner subjected to readmission procedure involves a third country. However, Moldova does so on the condition that the foreigner is escorted and that guarantees are provided that he/she can continue the journey and can enter the destination country: Point 32 of the Regulation and Article 59(2) of the Law on the regime of foreigners. At the same time, Moldova can request other states to transit airports in order to conduct removal under escort, though there are no readmission agreements. According to the Law, the competent authorities will take all necessary measures, though the law does not set out what kind of measures in the legislation may lead the foreigners back to the country if during the removal by air:

- transit authorization was refused or revoked;
- the foreigner entered the territory of the requested state during the transit;
- the removal of the foreigner to another transit country or to the destination country or to a connection flight was not performed;

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<sup>14</sup> A foreigner who committed, commits or who is justifiably believed to intend to commit any actions that may pose danger to national security or public order can be declared a *persona non grata* by the Bureau of Migration and Asylum for a period from 5 to 15 years with the possibility of extension. . On the date the person is declared *persona non grata* right of residence ceases.

- airport transit is no longer possible (Point 35 of the Regulation).

The transit operation will not last longer than 24 hours, and only in exceptional cases can be prolonged for up to 48 hours. Point 42 of the Regulation sets all the obligations for the competent authority during the transit operation.

Article 3 of the Readmission Agreement with the European Community of 2007 obliges the Republic of Moldova to readmit third-country nationals. However, it does not set any other provisions regarding the further actions of the state. The Law on asylum in the Republic of Moldova and Law on the regime of foreigners do not contain express provisions in this regard either. In the case of foreigners, be they asylum seekers or holders of forms of protection or a resident permit, their status on the territory of the Republic of Moldova will be analyzed based on the official records. Thus at the level of the Bureau of Migration and Asylum data regarding foreigners the Integrated Information System in the Migration and Asylum domain is included. Legislation does not contain any provisions regarding the cancellation or revocation of the right to stay in the Republic of Moldova based on the fact that the person was readmitted to Moldova. The only provisions which fall under interpretation in this regard are conditions for granting the residence right in the future, if the foreigner violated the rules for crossing the state border. Taking into consideration Moldova's common border with an EU Member State are not excluded cases when foreigners look for possibilities to cross the border. The legislation in force provides for sanctions for violating the state border and regardless of citizens or foreigners, includes those who seek asylum, the cases will be examined regardless of the status of the person<sup>15</sup>. The question of status is important when examining the stay of a foreigner on Moldovan territory, but it must take into account the *non-refoulement* principle and, for example, the family unity principle in cases of mixed marriages.

### *Expulsion*

According to Article 174 para. (4) of the Execution Code of the Republic of Moldova<sup>16</sup>, internal affairs bodies are responsible for the execution of the decision regarding the expulsion of foreign citizens or stateless persons. In accordance with Article 292 of the Code, the court shall send its decision regarding the expulsion of the foreigner to the internal affairs body in whose jurisdiction the person resides or was detected. If the person subjected to expulsion was condemned to imprisonment, the imprisonment authorities, sends the judgment to ensure enforcement 5 days before the release of the person, to the internal affairs body in whose jurisdiction the person subjected to expulsion was detected or domiciled.

According to Point 54 of the Regulation on removal, the Bureau of Migration and Asylum is responsible for the execution of the expulsion measure for any foreigner who committed an administrative offence or a crime on the territory of the Republic of Moldova and in respect to whom there is a final court judgment. In order to proceed with the expulsion, the authorities will issue a decision informing the foreigner about his/her expulsion in the state language, a language from international circulation or via an authorized translator.

Within 24 hours the expulsion measure will be registered in the Integrated Information System on Migration and Asylum under the competent authority. If the expulsion cannot be conducted due to documentation/financial issues, the authority will request from the court placement of the foreigner under public custody (Point 57 of the Regulation). The Law on the regime of foreigners sets restrictions in Article 63 where expulsion is prohibited, namely:

- if there is justified concern that a foreigner's life may be put at risk or he/she will be subjected to torture, inhuman or degrading treatment there.

<sup>15</sup> Article 332 of the Contravention Code and Article 362 of the Penal Code

<sup>16</sup> of 24 December 2004, published in Monitorul Oficial no. 214-220 of 5 November 2010.

- if the stateless person is legally staying on the territory of the Republic of Moldova, except the case where there are reasons of national security or public order; in this case the court must rule. The decisions of the Bureau of Migration and Asylum can be appealed in court by going through all three stages: territorial court, Court of Appeal, Supreme Court of Justice. After this, there should be a final judgement.
- if the foreigner is suspected, accused or defendant in a criminal case, the prosecutor or court obliged him/her not to leave the country and no permission for leaving the country was given (Article 12 para. (1) let. a)).
- if he/she was convicted based on a final court judgment and if they must execute a detention sentence, criminal sentence in the form of fine or non-reimbursable work for community benefit (Article 12 para. (1) let. b)).

#### *Placement under public custody (detention)*

This is a measure for restricting the freedom of movement imposed by the court against:

- the foreigner who could not be returned within the terms provided for by the Law on the regime of foreigners. For example in the case of foreigners who have to be removed under escort within 24 hours and, yet, where said removal is not accomplished the person can be placed under public custody. The same situation applies in the case of former asylum seekers who did not leave the territory within the established period of time for voluntary return and who have no valid travel documents and financial means for leaving the country;
- the foreigner who was declared *persona non grata*;
- the foreigner sentenced to expulsion by a court of justice.

The initial period of custody is 30 days and can be prolonged by the court at the motivated request of the Bureau of Migration and Asylum. However, it cannot exceed 6 months (Article 64(6)). Foreigners placed under public custody based on a court decision are placed in the Center for Temporary Placement of Foreigners, whose activity is regulated by the Law on the regime of foreigners in the Republic of Moldova (Articles 65-66) and the Regulation of the Center for Temporary Placement of Foreigners. This is approved through Government Decision no. 493 of 7 July 2011<sup>17</sup>, which partially transposed the Directive 2008/115/CE of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. The Regulation of the Center regulates the functioning, the regime and the internal order of the Centre for Temporary Placement of Foreigners, the rights and duties of the foreigners placed in the Center, relations between foreigners and staff (Point 1). According to Point 7 of the Regulation foreigners taken into public custody shall be placed in the center based on the court decision, until performing the expulsion, readmission or return from the Republic of Moldova. Foreigners are placed in the Center based on Article 40 para. (para. 3) of the Contravention Code of the Republic of Moldova which provides that if the foreigners cannot be expelled immediately, the court may order detention and the person is placed in the Center for Temporary Placement of Foreigners for a period not exceeding 6 months. If after these 6 months the person, who has an expulsion decision, has not been removed from the territory, he/she will be released from the Center. The issue that arises in this context is that the foreigner is not eligible to be granted the tolerated stay under the Law on the regime for foreigners, as this is an expulsion decision. But, at the same time, the person in question might be in a position not to be able to leave the country because of lack of documents.

When the foreigners are placed in the Center they are subjected to:

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<sup>17</sup> Published in Monitorul Oficial no. 118-121 of 22 July 2011.

- registration in the register, with subsequent recording in the personal data information subsystem of the Bureau of Migration and Asylum;
- registration of fingerprints and photography;
- body search;
- medical examination (Point 9).

Within 24 hours of a foreigner being placed in the Center the necessary measures are taken in order to inform the embassy or consulate (Point 20). The Law on the regime of foreigners and the Regulation expressly provided for the rights and duties of detained foreigners and have special provisions regarding conditions for placing minors (Chapter VI of the Regulation) and women (Chapter VII of the Regulation).

Foreigners who are in the Center have the right to apply for asylum in the Republic of Moldova and thus their status is regulated during the examination of asylum claims under the Law on asylum in the Republic of Moldova, 18 December 2008. Thus, though there be an expulsion decision, if the person is accepted under the asylum procedure, the decision will suspend proceedings. At the same time, being granted access to the procedure, asylum seekers cannot be detained in the Center and these persons are released based on a court judgment. In practice this situation can be abused by foreigners who are ‘playing for time’ before going to another country or who apply for asylum just to leave the detention center. In Moldova asylum seekers have the right to stay in the Accommodation Center according to Article 28 let. m) of the Law on asylum, which is also administrated by the Bureau of Migration and Asylum.

After 6 months in the Center for Temporary Placement the Bureau of Migration and Asylum is obliged to release any foreigner, even if no solution was found for a return to the country of origin, especially when lacking necessary documents.

At the moment a new situation is provided for by the new legislation in force in the Republic of Moldova, namely tolerance of stay on the territory. Thus, according to Article 67 of the Law on the regime for foreigners, tolerance of stay means the permission to stay in Moldovan territory, granted by the competent authority to those foreigners who have no residence right and who, for objective reasons, cannot leave said territory (Article 67). Foreigners declared *persona non grata* and those subjected to expulsion are not, however, included (Article 68 para. (2)). Given that the tolerance regime is a kind of temporary “pseudo form of protection” it is understandable why foreigners declared *persona non grata* and persons subjected to expulsion are excluded from this regime. At the same time it is the responsibility of the Bureau of migration and asylum to conduct all necessary legal procedures to remove the person from the territory. In both cases the moment a decision is issued the respective note is made in the information system and within 24 hours and the person must be escorted to the border or to the country of transit/destination. However, it is not clear from the Regulation what steps will be undertaken if the procedures is not conducted in due time: for example, what happens if it was not possible to get the necessary travel documents in a timely fashion.

The tolerance regime is granted for a period up to 6 months and may be extended. It is though limited territorially as the competent authority can impose a restriction regarding validity only to the residential area of a foreigner.

#### *Prohibition of entrance into /exit from Moldova*

Foreigners who do not fulfill the conditions for entering into/exiting from Moldovan territory will not be authorized to cross the state border of the country. The law on the regime for foreigners in the Republic of Moldova sets the aforementioned conditions and also the conditions when entry into (Article 8) or exit from (Article 12) the country is prohibited.

The border policeman refuses entrance/exit based on specific motives. The foreigner has the right to appeal the decision, but the appeal has no suspensive effect on any refusal decision. Moldovan

legislation expressly provides that the person who is refused will be given the contact data of the Union of Lawyers, which can represent the interests of said person<sup>18</sup>. If the foreigner was refused the authorized crossing of the state border, he/she is obliged to leave the crossing point immediately, the information being introduced in both information systems of the Border Police Department and the Bureau of Migration and Asylum. Simultaneously these provisions do not exclude the right to apply for asylum in accordance with the Moldovan Law on asylum. Taking into consideration that asylum applications are examined by the Bureau of Migration and Asylum, a specialized subdivision Asylum and Integration Unit, and that the Border Police Department has no competences in examining the claims, the assessment of a foreigner's claims will be done on the territory. In this way the principles of access to the territory and non-refoulement established in the asylum procedure are respected.

If it is not possible for the foreigner to leave the border crossing point immediately, he/she will be accommodated in a place meant for this purpose but for no longer than 24 hours. If the causes impeding his/her departure are still an issue 24 hours after the accommodation is given, the foreigner shall be handed over to the Bureau of Migration and Asylum for removal from Moldovan territory (Article 8 para. (5) of the Law on the regime of foreigners).

### *Legal safeguards*

The law on the regime of foreigners transposed not only the procedures set out in Directive 2008/115/CE, but also the legal safeguards relating to human rights protection. Thus Article 60 of the Law and Point 20 of the Regulation gives cases where the removal of foreigners from Moldovan territory is forbidden, including cases where minors are involved or where family unity can be affected. Special provisions are also inserted in the Regulation of the Center for the Temporary Placement of Foreigners. Thus according to Point 12 of the Regulation of the Center family members benefit from separate accommodation and children can be accommodated together with foreigners (Point 13). Point 47 states that if the child is accompanied by his/her parents or close relatives, he/she will be placed with them. Children have the right to decide to stay or to not stay with parents. They will not be separated from parents against their will. If it is impossible to keep a family together, children remain with their mother.

Although asylum is examined under the Law on asylum in the Republic of Moldova, the cases relating to asylum requests or requests for access to asylum procedures can also be encountered at the removal stage. Thus the principle of *non-refoulement* provided for in Article 11 of the Law on asylum must be taken into consideration. Also according to Article 28 let. a) of this Law the asylum seekers cannot be returned or expelled until the asylum application is resolved. In the case of refugees and beneficiaries of humanitarian protection return and expulsion can be applied only in cases set by the legislation in force. Thus refugees and the beneficiaries of humanitarian protection, who have had a court judgement of expulsion issued against them, pursuant to the provisions of the Criminal Code, shall be granted a reasonable term to perform the necessary formalities in order to be admitted into another country. This results from the *non-refoulement* principle, which is mandatory under the 1951 Convention relating to the refugee status to which Moldova is a party.

### *Legal assistance*

The Law no. 198 on legal assistance guaranteed by the state, 26 July 2007<sup>19</sup>, granted foreign citizens the right to apply for legal assistance and stateless persons in procedures or cases that are under the competence of the public authorities and the courts of the Republic of Moldova. According to Article

<sup>18</sup> Article 24 para. (3) of the Law no. 215 on the state border of the Republic of Moldova, 4 November 2011, published in Monitorul Oficial no. 76-80 of 20 April 2012, entered into force 1 July 2012.

<sup>19</sup> Published in Monitorul Oficial no. 157-160 of 5 July 2007



20 let. c) this assistance will be granted when there is a risk that expulsion is applied within contravention procedures. By this action access to a fair trial is ensured.

### 3. Return to Moldova and Reintegration<sup>20</sup>

Based on the readmission agreements signed by the Republic of Moldova, the Ministry of Internal Affairs via the Bureau of Migration and Asylum is in charge of conducting the readmission procedure of their own nationals and third-country nationals, in cases provided for by the agreements and implementing protocols. After the readmission process the competence of the authority stops and the competence of the Ministry of Labour, Social Protection and Family and other institutions like the new created Agency for Diaspora, Inter-ethnic relations Bureau can be performed.

The legislation of the Republic of Moldova does not contain any provisions sanctioning citizens/foreigners for staying illegally in their former country of destination. At the same time no information is available on cases when citizens applied for international protection except statistical data: the provision of any other information will be considered an infringement of the 1951 Convention. If a Moldavian citizen applied for asylum in one of the Member States, was rejected and his/her stay became illegal in the destination country the person's return would be conducted under readmission agreements, but no information will be offered to Moldova regarding the asylum claims in the MS, the person being returned as an irregular migrant.

Any foreigner has the right to apply for asylum regardless of their stay before entering Moldova. Indeed, the Constitution of the Republic of Moldova sets in Article 19 para. (3) the constitutional right to seek asylum in Moldova, each application being examined under the provisions of the Law on asylum in the Republic of Moldova 18 of December 2008.

7 July 2011 the International Organization for Migration in Moldova launched the Moldovan component of a regional project: namely, the **Support for the Implementation of EC Readmission Agreements with the Republic of Moldova, the Russian Federation and Ukraine – Facilitation of Assisted Voluntary Return and Reintegration (SIREADA)**. The two-year project was funded by the European Union and co-funded by the Austrian Development Agency with a budget of 467,652 Euro. The main implementing partners were the Bureau of Migration and Asylum (of the Ministry of Interior), the National Employment Agency (under the Ministry of Labour, Social Protection and Family), and the NGO "Institute for Penal Reforms". The Project responds to the EU and Moldova's desire to support the implementation of the bilateral Readmission Agreement by facilitating reintegration of the readmitted/voluntary returned Moldovans. This means enhancing the reception capacities and providing voluntary return assistance to readmitted/ irregular third-country nationals, and by contributing to smooth transition to a sustainable return system in Moldova<sup>21</sup>.

The importance of reintegration is underlined in the National Strategy in the Migration and Asylum Domain (2011-2020).<sup>22</sup> This ensures a faster and effective reintegration process, maximizing the possible benefits and minimizing the negative consequences of migration: it is important to create the conditions for the reintegration of migrant workers<sup>23</sup>. The main objectives in this regard are the following:

<sup>20</sup> The reintegration issue is better analyzed in the explanatory note on integration

<sup>21</sup> <http://www.iom.md/index.php/en/media-center/press-releases/189-eu-backs-further-readmission-reform-and-support-to-returning-moldovans>

<sup>22</sup> Approved through the Government Decision no. 655, 8 September 2011, published in Monitorul Oficial no. 152-155 of 16 September 2011

<sup>23</sup> Chapter IV Point 21 let. b)

- the facilitation of the migrant workers' return and their economic, social etc. reintegration;
- the creation of the referral mechanism regarding returned migrant workers, their basic capacities and necessities;
- a strengthening of the legal framework and an adoption of measures regarding the reintegration of Moldovan citizens: voluntary returned or readmitted based on the Agreement between EU and Moldova

The Action Plan for the years (2011-2015) regarding the implementation of the National Strategy in the Migration and Asylum Domain (2011-2020)<sup>24</sup> provides that the state authorities will perform activities to reintegrate citizens:

- Establishment of mechanisms for the recognition of knowledge and professional experience of migrants obtained abroad, through their use on the local labour market upon return;
- Elaboration and development of the evidence mechanism of returned emigrants to the country with a view to facilitating their access to the labour market from Moldova;
- Development of projects with a view to knowledge transfer and new competencies upon return of emigrants to the country;
- Initiation and accomplishment of joint activities with destination countries for facilitating the return and reintegration of migrant workers on the Moldovan labour market;
- Diversification of the participation models of migrants when supplying social funds from the country and the insurance of migrant workers' social security;
- Elaboration of reintegration programs of persons from vulnerable categories: minors, single women, persons with disabilities etc.;
- Development of cooperation with international institutions and NGOs with a view to facilitating the voluntary return, readmission and reintegration of Moldovan migrants;
- Elaboration of programs for stimulating the return of Moldovan migrant workers from abroad and their reintegration;
- Monitoring of the implementation of migrant workers' return programs from abroad and their reintegration.

With a view to solving the current problems of citizens of the Republic of Moldova who are permanently abroad (diaspora) through a Disposal of the Government no. 90 of 26.09.2011<sup>25</sup> the public authorities received concrete tasks for execution, including:

- entrance of low-cost companies on the market with a view to the liberalization of air passenger traffic,
- acceleration of the process of signing bilateral agreements on social security with main destination countries,
- introduction of state policy measures for the protection of children lacking parental care as a result of migration,
- elaboration of specialized programs for the social and economic integration of returned migrants in the Republic of Moldova,
- evaluation of possibilities regarding the creation of one or several specialized institutions (funds, banks etc.) which would allow the accumulation of funds for diaspora support (budgetary funds, private sector, foreign assistance etc.). These would also channel support from the diaspora to Moldova. At the end of 2012 a Bureau for relations with the diaspora was created.

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<sup>24</sup> Approved through the Government Decision no. 1009, 26 December 2011 published in Monitorul Oficial no. 1-6 of 6 January 2012

<sup>25</sup> Published in Monitorul Oficial no. 160-163 of 30.09.2011

## **Conclusion**

In the context of the Republic of Moldova readmission and return has a rather procedural content, while reintegration is seen as a more socio-economic process. Even at the level of implementation two different central public authorities are involved namely the Ministry of Internal Affairs and the Ministry of Labour, Social Protection and Family. The question that arises in this regard is whether this policy should be revised and whether the competence of the authority in charge for readmission and return should play a more active role in the accommodation of the nationals. In this way they would contribute to limiting the further emigration by the same people.



**Readmission, Return  
and Reintegration: Moldova**

**VALERIU MOSNEAGA**

*Socio-Political Module*



## **Readmission in the Context of Moldovan Migration Policy**

The issue of readmission of Moldovan citizens from host countries became particularly relevant for the Republic of Moldova during the period of mass international labor migration of the Moldovan population.

The Moldovan authorities have long opposed the signing of readmission agreement with the European Union. The reason for this was the fear that they would have to pay the transportation and other costs for expulsion of Moldovan and foreign citizens who entered EU from the territory of the Republic of Moldova, back to their home country. Given the volumes of Moldovan labor migration abroad, this could result in collapse of the national budget.

A solution was found in the package agreed in the Readmission Agreement and Facilitated Visa Regime Agreement with the EU (2007). The agreement entered into force on January 1, 2008 for Moldovan citizens and in 2010 for third country nationals. In 2009-2013 the readmission agreement with EU entered into force, as well as provisions of the implementation protocols with 11 countries (Austria, Benelux, Bulgaria, Czech Republic, Hungary, Italy, Germany, Denmark, Latvia, Lithuania, Malta, Romania, Slovakia and Estonia); as well as with non-EU countries: Switzerland, Norway, Montenegro, Bosnia and Herzegovina, Serbia, Macedonia, Turkey, and Ukraine (1997).

These agreements apply not only to readmission of Moldovan citizens, but also to foreign nationals who entered these countries from the territory of the Republic of Moldova. Today Moldova aspires to sign readmission agreements with the top countries of origin of illegal migrants. In 2007, proposals to sign bilateral agreements of this kind were sent to the authorities of Russia, Uzbekistan, Tajikistan, Georgia, Azerbaijan, Armenia, Kazakhstan, Belarus, Kyrgyzstan, Turkmenistan, Syria, Bangladesh, India, Lebanon, Pakistan, Jordan, Afghanistan, Iran, Iraq, and China. Negotiations with Russia are currently in progress.

## **Return and Readmission: Quantitative Flows**

There is no concrete answer as to how many labor migrants have returned to Moldova. The most common answer is 1,000 persons (according to the Ministry of Labor, Social Protection and Family), while less frequently the number of 2,000 persons is mentioned (IOM data). It is unlikely that any of these numbers is reliable, since both are too "rounded-up", and also due to the lack of adequate methodology. The first number is based on the requests submitted to the regional offices of the Employment Committee when people state that they do not have a job because they returned from abroad. However, if people do not ask for this service, they are not registered as repatriates. There is, therefore, no answer to the most important question: what is the share of migrants submitting requests for employment in the total population of returnees.

Possibly, the information obtained from the Moldovan border police may be more adequate, as it registers the balance of entries and exits at the national border of the Republic of Moldova. Migration balance shows that exits (departures) of Moldovan citizens abroad traditionally and largely exceed entries (arrivals) to the country. The exception is in 2009, when the global economic crisis caused a huge wave of returning Moldovan migrants who lost their jobs in the host countries, above all, in the European Union.

**Table 1. Annual number of crossings of the national border of the Republic of Moldova, 2005-2010, (cases)**

	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Annual number of entries of citizens of the Republic of Moldova at the national border	3,608.600	4,105.200	4,474.800	5,304.000	5,241.400	4,990.000
Annual number of exits of citizens of the Republic of Moldova at the national border	3,731.200	4,217.500	4,600.200	5,404.300	5,131.400	5,071.600
Entry-exit balance	<b>- 122.600</b>	<b>- 112.300</b>	<b>- 125.400</b>	<b>- 100.300</b>	<b>90.000</b>	<b>- 81.600</b>

Source: Border-guard service / Police of the Republic of Moldova

One way or another, these numbers hardly accurately reflect the scale of returns. This is explained by the following facts: 1) The Moldovan state does not control the national border in the Transnistrian sector of the country, and therefore does not have the numbers for entries and exits Eastward; 2) Migration balance of entries/exits is not equivalent to the number of people who departed and arrived (migrants). Some people undertake several entries/exits within one year; 3) Migration is a dynamic phenomenon, both in terms of total numbers and in terms of the individual personal parameters of migrants: some withdraw from the migration process, some join it. This is true for the representatives of both old and new demographic cohorts/generations.

A certain portion of Moldovan labor migrants went through involuntary return and were deported from the EU. According to the Eurostat data for 2008-2010, 9,515 Moldovan citizens were deported from the EU.<sup>1</sup> Their destiny in Moldova is unregistered.

There is also voluntary return from the EU, which is possible due to financial support from international organizations. According to the IOM data in 2010, 110 persons returned to Moldova, which is 25% higher when compared with 2009, and three times more than in 2007. Most of them returned from France, the Czech Republic, Germany, Hungary, Spain and Austria.

**Table 2. Number of Moldovan citizens returned from the EU under readmission in 2005-2010 (cases)**

	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b><i>Returned Moldovan citizens</i></b>	33	18	14	45	88	110

Source: IOM office in Chisinau, Republic of Moldova

Recently, there has been readmission of foreign citizens from the Republic of Moldova, which takes place on the basis of court decisions or administrative decisions by the Bureau of Migration and Asylum of the Ministry of Interior of the Republic of Moldova.

<sup>1</sup> Cirlig V., Mosneaga V. (2012) *Migration Movements between Moldova and the REU: Policies and Numbers*. In: ICMPD. *Research Papers drafted within the framework of the "Building Training and Analytical Capacities on Migration in Moldova and Georgia (GOVAC)" project. Internship to ICMPD, September 2011*. Vienna, OstWest Media, p.64-65.



**Table 3. Readmission of foreign citizens from the Republic of Moldova, 2010-2012  
(number of cases)**

	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>Total</i>
<i>Based on court decisions</i>	58	70	85	213
<i>Based on administrative decisions</i>	...	49	185	234

Source: Bureau for Migration and Asylum of the Ministry of Interior of the Republic of Moldova

In 2010-2012, 213 foreign citizens have been expelled from Moldova based on court decisions. Mostly, these were citizens of CIS countries that have a visa-free regime with Moldova. Based on administrative decisions, 234 persons have been expelled from Moldova in 2011-2012. Mostly, these were citizens of Russia, Ukraine, Turkey, Armenia and Azerbaijan. The growth of the number of persons subject to forced expulsion from the country can be explained by the efficiency of the procedure. The Ministry of Interior (Bureau of Migration and Asylum), which conducts forced expulsion based on its own administrative decisions, allocates special funds for this purpose. Furthermore, the IOM Office finances both forced expulsion from Moldova according to court decisions and voluntary return of foreigners to their homeland.

### Reasons for Return

Sociological surveys show that the main reasons for return of Moldovan labor migrants are:

- Age. Labor migrants of retirement age are more inclined to return to their home country, as it is difficult to find employment in the destination country;
- Children's education and their future;
- Difficulties in integration, unwillingness to perceive oneself as a "lesser human being";
- Loneliness, which can manifest itself in a feeling of being tired of migration, nostalgia;
- Willingness to reunite with one's family;
- Parents or a spouse asking the labor migrant to return home;
- Health problems;
- Desire for self-fulfillment in accordance with one's training/qualification;
- Accumulation of sufficient capital to open one's own business;
- Deportation;
- Expired residence permit in the host country, etc.<sup>2</sup>

The social-demographic image of labor migrants who return back to their home country is as follows: most had vocational training, 12.8% - higher education, 9.5% graduated from colleges, 23.8% had incomplete secondary education, and 1.0% had received primary education or less. Most migrants who returned to Moldova were middle-aged or older, 1/3 were young people under 30 years old.

Male migrants have been mostly employed in construction; female migrants - in trade and services (household services). About 2/3 of migrants (especially women) were engaged in unskilled labor. Almost 2/3 migrants with higher education were employed as unskilled workers.

<sup>2</sup> ETF (2008). *The contribution of Human Resource Development to Migration Policy in Moldova*, p.40. [http://www.etf.europa.eu/web.nsf/\(RSS\)/C125782B0048D6F6C12574B90057DA98?OpenDocument&LAN=EN](http://www.etf.europa.eu/web.nsf/(RSS)/C125782B0048D6F6C12574B90057DA98?OpenDocument&LAN=EN)

## Moldovan Policy on Return and Reintegration of Migrants

The reintegration and return of Moldovan migrants is an important trend in national policy. The Moldovan authorities implement a Program for the Attraction of Remittances into the Economy "PARE 1+1" for 2010-2014, and a National Program for Economic Empowerment of Young People (PNAET), which implies training in entrepreneurial skills and providing financial support to entrepreneurs at the beginning of their activities. Certain measures are undertaken that aim at the recognition of skills and qualifications (in accordance with the provisions of the National Concept of recognition of informal and formal education approved in November 2011). Furthermore, actions are implemented in the framework of EU - Moldova mobility partnership. Over 200 campaigns took place to inform Moldovan citizens in the country and abroad about the social-economic situation in the country and on the labor market, to attract remittances, to develop small and medium businesses, etc. Although the timeframe of the Action Plan for return of Moldovan labor migrants from abroad, approved by the Government on October 9<sup>th</sup>, 2008, has expired, the return and integration of Moldovan migrants remains an important objective defined by the National Strategy of the Republic of Moldova in the field of migration and asylum (2011-2020) and the Action Plan for 2011-2015.

Collaboration with diaspora and associations of Moldovan citizens abroad is also important in the context of migrants' return and reintegration. Dialogue with diaspora is the foundation for the programs of investment of remittances and social-economic reintegration of migrants. Currently the emphasis is placed upon the protection of Moldovan citizens abroad, the preservation of cultural authenticity, and the stimulation of migrants' return home. In this regard, the Action Plan for support of nationals of the Republic of Moldova residing abroad (Moldovan diaspora) for 2006-2009, the National Action Plan for 2008 for the Protection of the Citizens of the Republic of Moldova abroad, and the Action Plan for National, Cultural, and Social Support of Moldovan Diaspora in 2012-2014, can be mentioned. For better collaboration with Moldovan diaspora, the Government of the Republic of Moldova created the Bureau for Diaspora Relations, included in the organizational structure of the State Chancellery (November 2012).

There are a number of large-scale projects implemented in this area jointly with international organizations: the project entitled "Strengthening Moldova's capacity to manage labor and return migration" implemented by the Swedish Public Employment Service (SPES); the project entitled "Effective Governance of Labor Migration and its Skills Dimensions in Moldova" implemented by the WLO; the project entitled "Supporting the implementation of migration and development component of the EU-Moldova Mobility partnership" (SIMP), implemented by the IOM; the project entitled "Support to implementation of the EU readmission agreements with the Republic of Moldova, the Russian Federation and Ukraine: facilitation of assisted voluntary return and reintegration (SIREADA)"; the project "Supporting the implementation of the EC visa facilitation and readmission agreements in Moldova and Georgia (REVIS)," etc. The Ministry of Education of Moldova, together with the European Training Foundation, continues to work on the creation and strengthening of the mechanism of recognition and confirmation of migrants' skills based on the national concept of verification of informal and formal training ("Development of Vocational Training and Education System" project).<sup>3</sup>

The Republic of Moldova would benefit from receiving greater support from the European Union in the following fields:

- a) Labor migration (facilitation of return and circular migration);
- b) Social protection of migrants, which currently is not given enough attention by host governments;

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<sup>3</sup> Vremis M., Craievschi-Toarta V., Burdelnii E., Herm A., Poulen M. (2012) *Extended migration profile of the Republic of Moldova*. Chisinau, IOM.

- c) Strengthening national migration governance system, including development of institutional capacity, facilitated visa regime and readmission;
- d) d) Investment of remittances, development of small and medium businesses, etc.<sup>4</sup>

*"Currently, Moldovan authorities are not ready for the return of labor migrants who went abroad. Of course, our ultimate goal is for the citizens to return home, for the families to reunite, but currently, we are not ready to come with a slogan "Come back home!", - stated V. Lutenco, director of the Bureau for Diaspora Relations.<sup>5</sup> Moreover, as a result of poor communication and lack of transparency, many migrants are not aware of the migration policy of the Moldovan state and its actions aimed at return and reintegration.*

## Reintegration Problems of Moldovan Labor Migrants

The most significant reintegration problems faced by repatriates are the following<sup>6</sup>:

- the issue of psychological re-socialization of migrants. Returning migrants might find it difficult to integrate into the changed reality at home and to find their place in the society. They often remain alone face-to-face with their problems. Relatives and friends provide some support in the process of re-socialization in moldova. In the meantime, the issue of re-socialization in the host country is not less important. This applies to resolving one's internal personal conflict between what was "there" and what there is "here" and now. Relatives and friends, who are "here", cannot help with this issue. A solution can be found in the development of psychological counseling as well as in creation of conditions for communication with the persons who have similar migration experiences. This can be done, for example, in the framework of non-governmental organizations, such as "moldovan italy" (portugal, etc.), which facilitate re-socialization of repatriates in their home country, and contribute to the preservation of their language and socio-cultural identity on the territory of their host country.
- Family issues. Years of migration weaken marriages and family relations. Hence, it is important to provide support in restoring interaction and emotional relationships with relatives, children and parents, etc.
- health-related issues. At the time of migration, people often do not pay sufficient attention to health treatment, which results in lower health thresholds. Some migrants return with sufficient funds to afford proper medical assistance. However, advanced stages of diseases frequently result in loss of labor productivity, disabilities, and unemployment. Assistance to such persons should be included in the complex of actions aimed at the reintegration of repatriates.
- professional adaptation problems. Repatriates will have to work in moldova for wages that are significantly lower than those abroad. This affects the welfare of the family.

It should be taken into consideration that while abroad, moldovan labor migrants mostly have not been employed according to their training (construction is the most common exception), and have engaged in unskilled labor, losing skills and the profession acquired back home. Thereafter, it is difficult for them to find a job corresponding to their qualifications and training. Taking up employment of an unskilled worker is unprofitable in moldova.

<sup>4</sup> <http://www.mfa.gov.md/news-mobility-partnership-en/492435/>

<sup>5</sup> *Moldova admitted it is not ready for guest workers' return home [В Молдове признали неготовность к возвращению гастарбайтеров]*, 2013, January 12. Available <http://news.mail.ru/inworld/moldova/society/11578005/?frommail=1>.

<sup>6</sup> Mosneaga V., Burdelnii E., Vasilyeva L., Malinovskaya E. (2012) *Problems of reintegration and return of labor migrants from the European Union to the near-border countries [Проблемы реинтеграции и возвращения трудовых мигрантов из Европейского Союза в страны Пограничья]*. Vilnius: EGU, p.198-240.

Furthermore, the knowledge and skills acquired abroad can not always be applied in the home country. Currently, moldova is undertaking certain steps for the recognition of skills and qualifications acquired while working abroad and not certified by any relevant official documents<sup>7</sup>. Another problem in this context is who will attest to the quality of skills acquired informally? From prior experience it is known that efforts to verify the level of skills of moldovan migrants who have been employed in construction in russia have been a failure, because the members of the board were not aware of new construction technologies that the examinees learned to utilize.

Another important aspect is that in order to find a well-paid job, one should have access to information, which is mainly available through social connections and informal contacts. The question remains to what extent a person who has just come back home after a long stay abroad have access to such contacts, and whether the moldovan state can assist its citizens with this issue. Perhaps, a solution to the employment dilemma can be found via the development of business and small entrepreneurship by the returnees whose finances and energy could improve the situation on the domestic labor market. A wide range of measures and well-developed mechanisms for their implementation is necessary to make it happen.

The implementation is indeed an important factor here. One example is the greatly publicized program "pare 1+1". 124 small and medium enterprises have been chosen for this program for 2010-2012. The authorities promised the program participants that for each lei invested in the domestic economy, the entrepreneurs will receive one *pro bono* lei from the state, . However, in the total value of investments for this period, private investments constituted 76.2 million, whereas state investments constituted 22.5 million. As a result, as acknowledged by the ministry of economics, the project turned from "1+1" into "3+1". According to the experts, the initial good idea got ruined, as it often happens in the republic, in the process of implementation and organization of the process. This makes labor migrants lose trust and renounce their participation in the program. For this reason, approximately half of the resources allocated for the pare "1+1" project had remained unused in the past two years.<sup>8</sup>

According to the results of the iasci / civis survey, returning migrants often face problems of reintegration, especially those brought about by lack of jobs and low wages. It is hard to open one's own business due to insufficient funds, lack of access to information and violation of the "rules of game" by the state agencies. In such conditions, some migrants choose to migrate again<sup>9</sup>.

- Adaptation of children who grew up and received education in a foreign country. They had difficulties adapting abroad, and it can be difficult for them to return to their home country. The key problem is knowledge of the language, for the purposes of both communication and study.
- Problems of adaptation to social conditions in moldova due to the underdeveloped household infrastructure, the existing level of medical services, etc.

It should be taken into consideration that while the economic reasons are the main reasons driving a person into labor migration, a person's decision to return can be determined by other factors of societal character. The latter include everyday life, transportation, streetlights, roads, prices, and wages, combating corruption and bureaucracy, taxation, administrative, official actions, an unfavorable environment for functioning of small business, freedom of movement in and out of

<sup>7</sup> Antonov V., Ciurea C., Frunzaru V. (2012). *Recognition of previous studies for migrants who returned to Moldova: reality and trends [Recunoașterea învățării anterioare (RPL) pentru migrații întorși în Moldova: realități și tendințe]*. Chisinau, IDIS „Viitorul”.

<sup>8</sup> *PAREd as always. The State has lived up to its promises regarding participation in "1+1" program only by one third [PAREшли как всегда. Государство лишь на треть выполняет свои обещания по участию в программе «1+1»]*, December 10, 2012. Available [http://www.kommersant.md/node/11830?utm\\_source=mailru&utm\\_medium=banner&utm\\_campaign=gastarbaiter](http://www.kommersant.md/node/11830?utm_source=mailru&utm_medium=banner&utm_campaign=gastarbaiter).

<sup>9</sup> *Consolidation of ties between migration and development [Consolidarea legaturii dintre migratie si dezvoltare]* (2010). IASCI / CIVIS Chisinau, p.29-31. Available <http://siteresources.worldbank.org/INTMOLDOVA/Resources/ConsolidareaLegaturiiDintreMigratieDezvoltare.pd>.

country, and a visa-free regime. All of this can be generalized in one common notion– an efficiently functioning democratic political system, social state, and developed civil society. That is, it is possible to create the conditions for the return of migrants, provided that there is a favorable investment climate and reasonable government policy, which takes the needs and the requirements of migrants into consideration.

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**Readmission, Voluntary  
Return and Reintegration  
in Ukraine**

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## 1. Readmission

Since Ukraine regained its independence it has signed readmission agreements with 15 countries<sup>1</sup> and the European Union. In particular, agreements on the return and transfer of people through shared borders (readmission) have been signed with five of the seven states with which Ukraine shares land borders: Hungary, Poland, Slovakia, Moldova and Russia. Agreements have also been signed with Georgia, Uzbekistan, Turkmenistan, Vietnam, Lithuania, Latvia, Bulgaria, Switzerland, Turkey, Denmark and Norway. Unfortunately, not all of the agreements are efficient in operational terms. Thus, the agreement with Norway (signed 13.02.2008) has not yet been enacted. The agreement with the Slovak Republic, enacted 28.03.1994, was abrogated 04.10.2000 and now negotiations are being held on the agreement's revision. Negotiations also continue on additional documents or new versions of readmission agreements with Poland, the Socialist Republic of Vietnam, Switzerland, Turkey and the Russian Federation.

Apart from the countries, with whom readmission agreements have already been signed, negotiations are under way on the readmission agreement and draft implementation protocol with Armenia. In 2011 negotiations with Austria and Belgium took place for implementation protocol provisions concerning the mode of realization of the Agreement between Ukraine and the EU. Negotiations are also being held with Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan, Belarus and Lebanon; there are projects to start readmission negotiations with Bangladesh, India, Iran, Iraq, Sri-Lanka, China and Afghanistan as well.

The Readmission Agreement between Ukraine and the European Union (hereafter –the Agreement), enacted 01.01.2010, occupies a special place in the system of international readmission agreements. The signing of the Agreement manifested an important step forward in Ukraine's euro-integration ambitions. In accordance with the provisions of the Agreement, upon the request, the requested state admits to its territory all the persons, who do not fulfill all the requirements of entry to or stay on the territory of the state filing the request. Likewise it admits persons who ceased to fulfill the above requirements when the above persons are not the citizens of the state filing the request or did not acquire its citizenship. In accordance with the Agreement, Ukraine must also accept third-country nationals or stateless persons who illegally entered EU member-states directly from Ukrainian territory. It must likewise accept those who, at the moment of entry, have valid Ukrainian residence permits or active Ukrainian visas.

The signing of the Agreement and its ratification triggered a massive public reaction. The expert community and mass media expressed their apprehensions that Ukraine might be overwhelmed with hundreds of thousands of illegal migrants from third-party countries. These fears, however, proved unfounded. In two years since the Agreement's enactment (2010-2011), the State Border Service of Ukraine readmitted about 1,500 people, 57.4% of whom were Ukrainian nationals (Table 1), 28.8% - the nationals of other CIS countries (including Georgia) and 13.8%, the nationals of developing Asian and African countries.

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<sup>1</sup> <http://dmsu.gov.ua/normatyvna-baza/mizhnarodni-dokumenty/readmisiia>

**Table 1. Persons readmitted by Ukraine in 2010-2011 following the Readmission Agreement with the European Union, by nationality.**

Nationality	2010	2011	Total
Ukraine	469	391	860
Armenia	9	4	13
Georgia	60	36	96
Moldova	159	95	254
Russia (without Chechnya)	19	19	38
Russia (Chechnya)	15	6	21
Other CIS countries	5	4	9
Afghanistan	75	17	92
Vietnam	9	12	21
Somali	13	35	48
Pakistan	9	0	9
Palestine	10	0	10
Other countries	15	12	27
Total	867	631	1498

Source: State Border Service of Ukraine

The number of deportation decisions taken by the State Border Service of Ukraine in respect of illegal migrants and stateless persons gradually decreases. Thus, in 2010 such decisions were taken in 2,147 cases, in 2011 in, 1454 (the absolute majority of persons subject to deportation being the citizens of the CIS countries), whereas, 2004-2006, 5000-7000 decisions on deportation were taken annually. Of the total number of the persons subject to deportation 1660 left Ukraine in 2010 (77.3%) and 1043 in 2011 (71.7%).

According to Eurostat data, almost 35,000 Ukrainian nationals were deported from the EU member-states in 2008-2011. Over half of the deportations occurred in Poland, with considerable shares taken also by Germany, the United Kingdom, Czech Republic, Slovakia, France, Italy, Spain and the Netherlands.

## 2. Voluntary Return

1,794 and 1,199 decisions on voluntary return of migrants from third-party countries were taken in Ukraine in, respectively, 2010 and 2011. The absolute majority among them are the citizens of the CIS countries, principally Moldova (69.7% of two years' total), as well as Russia (10.2%) and Georgia (9.0%). Among other countries the largest share was that of Turkey (1.5%). Of the total number of people subject to voluntary return 1,446 left Ukraine in 2010 (80.6%) and 909 in 2011 (75.8%). Those migrants who did not leave Ukraine on their own, despite instructions to do so, were deported (348 persons, or 57.2%, left Ukrainian territory).

Three programs promoting voluntary return (Assisted Voluntary Return Program, AVR) have consecutively been implemented in Ukraine by the Office of the International Organization for Migration, 2005-2012, with financial aid from the European Union:

1. An AVR program within the EU financed project "Capacity Building in Migration Management – Ukraine: Units 1&2" was carried out from March 2005 to December 2008.
2. An AVR program within the EU financed project "Technical cooperation and capacity building of the Ukrainian and Moldovan governments for implementation of readmission

agreements with the European Union” (GUMIRA) was carried out from January 2009 to March 2011.

3. An AVR program within the EU financed project “Support to Implementation of EU Readmission Agreements with the Republic of Moldova, the Russian Federation and Ukraine: Facilitation of Assisted Voluntary Return and Reintegration” (SIREADA) was carried out from April 2011 to December 2012.

These programs encompassed migrants, who did not have any legal basis for staying in Ukrainian territory: asylum seekers who had been refused refugee status, as well as those who had voluntarily decided to stop the procedure of granting refugee status; migrants in strained financial circumstances. The required participation condition was the migrant’s desire to get back to the country of origin. This desire and a migrant’s eligibility for the program were proved during an interview held by an IOM officer or a non-governmental partner organization. After the interview, if necessary, migrants were directed to the regional departments of the State Migration Service of Ukraine where a decision was made on voluntary return. Migrants admitted to the program were granted assistance in terms of medical examination, travel tickets, solution of other trip-related problems, as well as a reintegration grant worth about 100 Euros.

A number of individuals were not admitted to the AVR program. This included: those people who were refused entry to Ukraine; who had committed grave crimes or who had been suspected of committing crimes on Ukrainian territory; or who intended to return to Ukraine after the program’s finish; as well as those who could afford themselves to return home at their own expense.

In eight years that the program ran, 1107 migrants passed through the interview, with 617 (55.7%) of them returning to their countries of origin. The absolute majority were adult males; 11% were adult women and 8% children (Table 2).

**Table 2. Participants of Assisted Voluntary Return Program in 2005-2012, number of persons.**

Program period	Number of persons interviewed	Number of persons returned			
		Total	Adult males	Adult females	Children
1 March 2005 – 31 December 2008	485	240	204	22	14
1 January 2009 - 31 March 2011	305	179	145	15	19
1 April 2011 – 31 December 2012	317	198	150	31	17
Total in 2005 – 2012	1107	617	499	68	50

Source: International Organization for Migration, Ukrainian Office

Among the AVR program participants the largest groups were formed by the nationals of Pakistan (14.4%), Afghanistan (10.4%), India (8.8%), Georgia (7.8%) and Uzbekistan (7.5%). The share of Pakistanis and Indians was gradually diminishing, whereas that of Afghans, Georgians, and Uzbeks was growing (Table 3).

**Table 3. Participants of Assisted Voluntary Return Program in 2005-2012, by nationality, number of persons.**

Country	1 March 2005 – 31 December 2008	1 January 2009 - 31 March 2011	1 April 2011– 31 December 2012	Total in 2005 – 2012
Afghanistan	12	14	38	64
Armenia	3	19	8	30
Bangladesh	13	1	-	14
Cameroon	6	1	13	20
Georgia	8	17	23	48
Ghana	18	3	8	29
India	34	20	-	54
Nigeria	14	8	7	29
Pakistan	41	44	4	89
Uzbekistan	1	7	38	46
Sri Lanka	18	5	-	23
Vietnam	10	3	5	18
<b>Total</b>	<b>240</b>	<b>179</b>	<b>198</b>	<b>617</b>

Source: International Organization for Migration, Ukrainian Office

### 3. Reintegration

Ukraine is now one of the largest donor-countries of labour force in Europe. The total number of Ukrainian citizens working abroad is estimated (as of 2008) to stand at some 2.1 million people.<sup>2</sup> Of these, 600,000 have been staying abroad for years and are, thus, long-term migrants. At the same time, as demography forecasts suggest, the shrinking of working age population is inevitable in Ukraine<sup>3</sup> and in approximately ten years Ukraine will have to deal with a labour force deficit. All this makes the problem of attracting immigrants all the more important.

As international experience shows, the most desired immigrant group for any country are its former residents who moved abroad in the past, as well as their descendants. The return of those long-term migrants, who, under certain conditions, are ready to get back to Ukraine, should be set forth as a primary strategic goal of Ukrainian migration policy. This raises the problem of re-immigrants' adaptation to a society that has changed in the period of their absence.

Despite the problem's importance, Ukraine still lacks programs aimed at the reintegration of returning migrants, even though some legal acts tackle the problem. The "Plan of Events for the Integration of Migrants into Ukrainian Society for 2001-2015"<sup>4</sup>, adopted in 2011, envisages information support on the issues of employment, entrepreneurial activities, social welfare and health care, as well as provision of psychological aid, to the migrants returning to Ukraine. The "Plano f

<sup>2</sup> Poznyak A. External Labour Migration in Ukraine as a Factor in Socio-Demographic and Economic Development. <http://www.carim-east.eu/media/CARIM-East-2012-RR-14.pdf>

<sup>3</sup> <http://www.idss.org.ua/public.html>

<sup>4</sup> <http://zakon0.rada.gov.ua/laws/show/653-2011-%D1%80>

Events on Ukraine's Migration Policy Realization,"<sup>5</sup> adopted in 2011, studies the possibility of relieving Ukrainian citizens, who stayed abroad for six months or longer and return home, of certain types of customs clearance. It is developing relevant proposals and preparing to submit these to the Council of Ministers of Ukraine. If a positive decision follows and there is the successful realization of such measures we can expect some improvement in business opportunities for potential reimmigrants, something which is an important factor of their return and reintegration.

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<sup>5</sup> <http://zakon2.rada.gov.ua/laws/show/1058-2011-p>



**Return, Readmission and Reintegration:  
The Legal Framework in Ukraine**

**LYUDMILA DAVYDOVYCH**

*Legal module*





Our analysis of Ukrainian national legislation demonstrates that it envisages procedures of readmission, compulsory return and expulsion, as well as voluntary return of foreigners and stateless persons.

The Law 3773-VI of 22.09.2011 “On legal status of foreigners and stateless persons”<sup>1</sup> provides definition only for the term ‘readmission’ (par. 22 of the preamble). According to the Law, readmission represents transfer from the Ukrainian territory or admission to the Ukrainian territory on the grounds and according to procedure set forth in the international treaties of Ukraine.

The Law also determines procedures of voluntary and compulsory return of foreigners and stateless persons from the Ukrainian territory, as well as expulsion procedure, but offers no definitions for the terms ‘voluntary return’, ‘compulsory return’ and ‘expulsion’.

Definitions of the terms ‘compulsory return’ and ‘compulsory expulsion’ are introduced in subordinate legislation, such, for instance, General decree of the Ukrainian Ministry of Interior, Administration of the State Border Service and Security Service of 23.04.2012 No. 353/271/150 “On approval of Instruction on compulsory expulsion of foreigners and stateless persons”<sup>2</sup>.

According to this Decree, ‘compulsory return’ and ‘compulsory expulsion’ represent the system of administrative and legal measures aimed at forcing a foreigner or a stateless person to leave the territory of the state against his or her will.

We have established that Ukrainian legislation in principle does not give a comprehensive definition for the term ‘voluntary return’, and from our point of view this is an oversight, as far as legislation determines procedure of application, but does not give a definition for this legal term.

## **Voluntary return**

Foreigners and stateless persons who do not have legal grounds for their stay in Ukraine, as well as persons who fail to fulfill their obligation and timely depart from the Ukrainian territory before the period of their legal stay expires and do so due to the lack of financial means or passports can voluntarily return to the country of origin or the third country, relying on assistance of international organizations among other things.

Ukrainian legislation clearly defines categories of foreigners and stateless persons who are entitled to procedure of voluntary return (article 25 of the Law No. 3773-VI of 22.09.2011 “On legal status of foreigners and stateless persons”):

1. Foreigners and stateless persons who were notified of refusal to grant refugee status or status of a person in need of additional protection;
2. Foreigners and stateless persons who were stripped of refugee status or status of a person in need of additional protection and did not use their right to appeal;
3. Persons who were notified of dismissal of their appeal against refusal to grant them refugee status or status of a person in need of additional protection and did not use their right to contest this decision in court;
4. Persons who received the court ruling that confirms refusal to grant them refugee status or status of a person in need of additional protection in Ukraine.

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<sup>1</sup> Ukrainian Law No. 3773- VI of 22.09.2011 “On legal status of foreigners and stateless persons”, available at <http://zakon2.rada.gov.ua/laws/show/3773-17>

<sup>2</sup> General Decree of the Ukrainian Ministry of Interior, Administration of the Ukrainian State Border Service and Ukrainian Security Service of 23.04.2012 No. 353/271/150, available at <http://zakon1.rada.gov.ua/laws/show/z1564-11>

According to Ukrainian legislation, procedure of voluntary return is carried out following the decision of Ukrainian migration authorities (part 3 of the article 25 of the Law No. 3773- VI of 22.09.2011 “On legal status of foreigners and stateless persons”).

In accordance with paragraph 5 of the Procedure of consideration of foreigners’ and stateless persons’ petitions for voluntary return, a foreigner, a stateless person or their legal representative personally file a written petition for voluntary return to the Ukrainian migration authorities.

Procedure of a foreigner’s or stateless person’s voluntary return is carried out following the decision of the Ukrainian State Migration Service and takes no longer than 60 days from the day when this person files petition to the State Migration Service; expenses are covered by the person returned.

According to paragraph 18 of the Procedure of consideration of foreigners’ and stateless persons’ petitions for voluntary return, if decision is made on voluntary return of a foreigner or stateless person from the territory of Ukraine, Ukrainian State Migration Service bodies immediately issue to this person a standard certificate of “a person to be returned”. This certificate is the basis for temporary stay of a foreigner or stateless person in the territory of Ukraine for the term required for completion of return procedure. After return procedure completion this certificate is given back to the migration authorities or is deemed invalid.

For the period of procedure in the Ukrainian territory persons who are subject to voluntary return are not detained, but are obliged to notify once a week the territorial office of the Ukrainian State Migration Service about their location.

Ukrainian legislation requires the State Migration Service to cooperate with international and non-governmental organizations, statutes of which envisage assistance in voluntary return of foreigners and stateless persons. This cooperation is carried out by way of concluding bilateral agreements between the Ukrainian Migration Service and international organizations.

Foreigners and stateless persons can be denied the right to voluntary return procedure in case if:

1. Decision was made to ban departure<sup>3</sup> of this foreign citizen or stateless person from the territory of Ukraine;
2. Person is convicted for a crime – until the end of the sentence or remission of punishment;
3. Departure of the person from Ukraine does not correspond to the interests of Ukrainian national security – until the end of such circumstances;
4. Persons whose departure following the court decision is postponed temporarily – until fulfillment of property obligations to physical and legal persons in Ukraine, if it is not otherwise provided for in the international treaties of Ukraine<sup>4</sup>.

Decision to deny voluntary return can be contested in court.

In case of decision on voluntary return of an underage foreigner or stateless person (the person who has not reached the age of 18), it must be established that in case of voluntary return this person will go back to a family member or guardian.

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<sup>3</sup> According to part 2 of the article 22 of the Law No. 3773- VI of 22.09.2011 “On legal status of foreigners and stateless persons”, departure of foreigners and stateless persons from Ukraine can be banned if: 1. Person is a suspect accused of committing a crime in Ukraine, if with regards to such persons a decision is made to ban departure from Ukraine; 2. Person is convicted of a crime – until completion of the sentence or relief from punishment; 3. Departure of this foreigner from Ukrainian territory does not correspond to interests of Ukrainian national security – until the end of circumstances that prevent departure.

<sup>4</sup> Regulation of the Ukrainian Cabinet of Ministers No. 179 of 07.03.2012 on Procedure of consideration of foreigners’ and stateless persons’ petitions for voluntary return”  
<http://document.ua/pro-zatverdzhennja-porjadku-provadzhennja-za-zajavami-inozem-doc91563.html>

## Compulsory return

According to article 26 of the Law “On legal status of foreigners and stateless persons”, foreigners and stateless persons can be **forcefully returned** from Ukraine to the country of origin or the third country, if:

1. Actions of the person violate Ukrainian legislation on legal status of foreigners and stateless persons or do not correspond to the interests of Ukrainian national security or public order;
2. Actions of the person present a threat to health, legal rights and interests of Ukrainian citizens;
3. Foreigner or stateless person was apprehended in a controlled border area during or after illegal crossing of the Ukrainian state border;

Compulsory return procedure is not applied to minors (persons who have not reached the age of 18), as well as to persons who are covered by the legislation on refugees and persons in need of additional protection.

Decision on compulsory return of foreigners and stateless persons is made by the State Migration Service, Security Service, and State Border Service. Ukrainian Security Service and State Border Service within 24 hours notify the prosecutor about the grounds for the decision made.

Decision on compulsory return can lead to a three-year ban on entry of Ukraine. Our analysis of Ukrainian national legislation determined that Ukrainian legislation does not establish conditions, under which ban on subsequent entry to Ukraine must be set for foreigners and stateless persons previously forcefully expelled from Ukraine. Thus one can make a conclusion that decision about establishing such a ban is made by relevant Ukrainian authorities within their scope of competence on a case by case basis, based on how grave the this person's offences had been.

Decision on compulsory return is announced to this foreigner or stateless person, who has to sign the document, in the presence of an interpreter and a legal representative (based on detainee's request) and can be contested by foreigner or stateless person in court. The start of contestation of such decision in court does not put on hold the decision on compulsory return of the person, unless otherwise established by the separate court ruling.

Person with regards to whom decision was made on compulsory return/expulsion has a right to immediately notify a legal expert who has a right to offer legal assistance, an official diplomatic representative of the corresponding country, and a representative of the Office of the United Nations High Commissioner for Refugees. In case of a request by UNHCR or official diplomatic representative of the relevant country, decision on compulsory return or expulsion can be put on hold, but for no longer than 10 days after its announcement, or can be cancelled in accordance with legal provisions on refugees and persons in need of additional protection.

According to Ukrainian legislation, decision on compulsory return of a person from Ukraine is to indicate the period within which the person in question is to leave the country, but this period is not to exceed 30 days.

Persons with regards to whom decision was made on compulsory return are not detained and are obliged to leave the territory of Ukraine on their own, but for the sake of proper control can be escorted to border checkpoints by representatives of Ukrainian authorities.

## Compulsory expulsion

In accordance of article 30 of the Law “On legal status of foreigners and stateless persons”, **compulsory expulsion** from Ukraine is applied to foreigners and stateless persons who failed to execute the decision on compulsory return, as well as to foreigners and stateless persons, if there are

reasonable doubts that they will fulfill the decision on compulsory return following the ruling of Ukrainian administrative court.

As far as decision on compulsory return is made exclusively by administrative court of Ukraine following the request of Ukrainian authorities, the court evaluates argumentation put forward by the requesting and defending parties and existing risks. Decision on setting or not setting the ban on entry of a foreigner or stateless person subject to compulsory expulsion from Ukraine is also made by the court. In case of court's decision on setting such a ban, its period is also determined by the court. The decision can be contested in higher court.

In order to analyze judicial practice in Ukraine in the field of decision-making on compulsory expulsion, we have studied the registry of court rulings in the field of expulsion of foreigners and stateless persons from Ukraine in 2012. We established that in absolute majority of cases the decision on compulsory expulsion from Ukraine was made with regards to foreigners and stateless persons who had failed to execute an earlier decision on compulsory return.

As a rule, the court also takes into account reasonable doubts that foreigners or stateless persons will execute the decision on compulsory return (if, for instance, Ukrainian authorities discovered deliberate violation of Ukrainian visa and immigration legislation requirements, including deliberate submission of false information about the reason for stay in Ukraine, earlier attempts to illegally extend the stay in Ukraine etc.).

Procedure of compulsory expulsion envisages mandatory detainment of the foreigner or stateless person and his or her transfer to facilities for temporary placement of foreigners and stateless persons who are subject to compulsory expulsion from Ukraine (hereinafter referred to as placement facilities). Persons stay at placement facilities for the period required to execute the ruling of administrative court on their expulsion, but no longer than 12 months.

In case the person with regards to whom decision is made on compulsory expulsion is a father/mother, guardian or accompanying person of a minor/minors who were detained together with them, their further expulsion is carried out together with minor/minors they had accompanied.

Foreigners and stateless persons who are placed in temporary placement facilities are entitled to: information about their rights and obligations during their stay at temporary placement facilities; meetings with family, human rights defenders, lawyers, representatives of diplomatic missions and consular offices of the country of origin, as well as representatives of international and non-governmental organizations; medical, sanitary and epidemiological support; religious rituals, use of religious literature, meetings with clergy; telephone communication, including use of personal communication devices; free access to TV and radio programs etc.

According to Ukrainian legislation, expulsion of foreigners and stateless persons is carried out at their own expense, and if the person lacks necessary means, then at the expense of Ukrainian state budget. If it was established that the person who is subject to expulsion had arrived in Ukraine in violation of Ukrainian legislation and relying on assistance of Ukrainian physical or legal persons, then financial costs of violator's expulsion are collected from those private citizens and organizations.

## Readmission

As of January 2013, Ukraine has 16 valid international treaties **on readmission**: with the European Union, Georgia, Uzbekistan, Turkmenistan, Vietnam, Poland, Russia, Hungary, Slovakia, Moldova, Lithuania, Latvia, Bulgaria, Turkey, Denmark, and Norway. Agreements on readmission between Ukraine and the EU member states (Poland, Lithuania, Latvia etc.) stay in force, until Ukraine and EU sign an agreement on readmission.

According to article 17 of the Agreement between Ukraine and EU on readmission, provisions of this Agreement prevail over provisions of bilateral treaties. Bilateral agreement on readmission with Denmark is an exception, as far as Denmark is not party to Agreement between Ukraine and the EU on readmission.

**According to Ukrainian legislation, transfer or admission of foreigners and stateless persons by Ukraine** are carried out based on provisions of international treaties on readmission.

Analysis of the above-mentioned treaties allowed us to establish that in general these are standard treaties that aim to provide for unobstructed expulsion and admission of persons who stay illegally in the territory of the expelling state and have the citizenship of the admitting state or have arrived from the latter's territory.

Integration of agreements on readmission into Ukrainian national legislation is done through the Law "On legal status of foreigners and stateless persons".

Admission by Ukraine of a foreigner or stateless person under the treaty on readmission does not change the grounds for his or her stay in Ukraine that had existed before this admission.

Those foreigners and stateless persons admitted under the international treaty on readmission who do not have legal grounds to stay in Ukraine are subject to **compulsory expulsion** from the Ukrainian territory, if there is no treaty on readmission between Ukraine and the country of citizenship or the country of previous residence. If there is a treaty on readmission between Ukraine and the country of citizenship or previous residence, the person is returned to the country of citizenship or the country of previous residence under this treaty.

Persons who applied for any forms of international protection in the territory of Ukraine cannot be returned or expelled until final decision is made on refusal to grant them the form of protection they are seeking.

Furthermore, according to Ukrainian legislation, foreigners and stateless persons cannot be forcefully expelled or returned to the country: where their lives or freedom are in danger due to their race, faith, nationality, citizenship (allegiance), membership in a certain social group or political beliefs; where they face a death sentence or death penalty, torture, cruel or degrading punishment or treatment; where their life, health, safety, or freedom are in danger due to widespread violence in the course of an international or domestic armed conflict or systematic violation of human rights, as well as natural or man-made disaster, lack of medical treatment or care to sustain life (article 32 of the Law "On legal status of foreigners and stateless persons"). Ukrainian legislation also forbids collective compulsory expulsion of foreigners or stateless persons.

In accordance with Ukrainian national legislation, if foreigners and stateless persons were not forcefully expelled from Ukraine before completion of the maximum period of stay at temporary placement facility for persons who are illegally staying in Ukrainian territory and if this happened due to the absence of a travel document, lack of transport connection with the country of origin or for other reasons that are beyond these persons' control, then they are deemed persons temporarily staying in the territory of Ukraine on legal grounds, while circumstances due to which their compulsory return is impossible persist (paragraph 17 of article 4 of the Law "On legal status of foreigners and stateless persons"). Such foreigners or stateless persons are issued a temporary residence permit in Ukraine and enjoy the same rights and fulfill all obligations envisaged by Ukrainian legislation for foreigners and stateless persons who temporarily reside in Ukrainian territory on legal grounds.

As a result of our study of the Ukrainian legislation we have established that Ukrainian citizens who were returned to Ukraine from other states enjoy all rights and freedoms guaranteed by the Constitution and Ukrainian laws, regardless of the status they used to have in the territory of other states (legal/illegal stay, refugee status etc.), provided that they are not accused of a criminal or other unlawful act under Ukrainian legislation. Ukrainian citizen's application requesting any form of

international protection in another country is by no means a foundation for any type of sanctions with regards to such a person in Ukraine.

In the context of Ukrainian legal reform in the field of migration, in June 2011 the Ukrainian Government adopted an Action Plan to assist in integration of migrants, as well as reintegration of Ukrainian migrants returning to Ukraine in 2011 – 2015<sup>5</sup>.

The plan envisages development of a complex of measures aimed at informing Ukrainian migrants who have returned to their home country about employment opportunities in Ukraine, at offering them social and psychological assistance etc.

In order to implement this governmental regulation, regional and district administrations developed sets of measures aimed at providing assistance to Ukrainian migrants after their return to the home country, primarily social aid.

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<sup>5</sup> Regulation of the Ukrainian Cabinet of Ministers No. 653-r of 15 June 2011 “On approval of the Action Plan to integrate migrants into Ukrainian society in 2011-2015” <http://zakon0.rada.gov.ua/laws/show/653-2011-%D1%80>

**Readmission, Return and Reintegration  
of Migrants in Ukraine:  
Socio-Political Context**

**EKATERYNA IVASCHENKO-STADNIK**

*Socio-Political Module*





## Current political context

The instability of the foreign policies of the Ukrainian state in this time of total economic, legal and institutional crisis,<sup>1</sup> the dependence on group interests in the decision-making processes relating to tactical issues,<sup>2</sup> together with the national leadership's lack of motivation to raise migration issues at state policy level, condition the current situation in Ukraine, in which programs relating to readmission, return and reintegration of various migrant groups come last in the list of the state's priorities. Despite large-scale multilateral efforts to draft readmission agreements and coordinate the necessary executive protocols, which were initiated in the 1990s, the practical results of decentralizing activities by the Ukrainian executive authorities, which are responsible for the implementation of the agreements signed, do not match the scope of the tasks set and even impede the possibility of improving the mechanisms of migration management.

Both Ukrainian and international experts have observed that since 2010, the Ukrainian government's assurances of its adherence to democratic values and a strategic migration partnership have often been formal in character, especially in cases when a solution to their burning economic problems does not come as part of the package.<sup>3</sup>

Among the principal problems of Ukrainian migration policy related to receiving migrants (including Ukrainian citizens, nationals of CIS countries and nationals of third party countries), experts have noted:

- 1) the absence of a clear delineation of competencies and systematic approach to the regulation of inter-agency cooperation (thus several independent agencies currently engage in the implementation of readmission agreements and these include both the Ministry of Internal Affairs, with its subordinate the Migration Service of Ukraine (standard procedure), and the State Border Service of Ukraine (shortened procedure));<sup>4</sup>

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<sup>1</sup> The difficulty Ukraine has faced on the path of European integration in the last six months has become one of the key issues in public policy debates both within the country and abroad. See: "The President of Poland: European integration of Ukraine is 'highly questionable'" // UNIAN, 15.01.2012: <http://www.unian.net/news/512299-komarovskiy-evrointegratsiya-ukrainyi-pod-bolshim-voprosom.html>, accessed 15.01.2013; "European Commission reminded Ukraine of the incompatibility of European integration with Ukraine's membership in the Customs Union" // UKRANEWS, 25.12.2012: <http://ukraneews.com/ru/news/ukraine/2012/12/25/86657>, accessed 15.01.2013; During his recent visit to Ukraine, the European Commissioner for Enlargement and European Neighborhood Policy Štefan Füle noted Ukraine's insufficient progress on the path of European integration, which casts doubts on the possibility of signing the EU-Ukraine Association Agreement in the near future. See: "Classified as 'critical': Ukraine, Rada and European integration" // UNIAN, 08.02.2013: <http://www.unian.net/news/552088-pod-grifom-kritichno-ukraina-rada-i-evrointegratsiya.html>, accessed 15.02.2013.

<sup>2</sup> A lot of experts have pointed out that a key determinant of strategic decision-making processes in Ukraine is the transformation of the political regime - from 'relatively democratic' in 2010 to 'harshly authoritarian' as of 2013, which shifts the priorities of domestic and foreign policies and hinders reforms in all key areas, including those in the field of migration (see: "Ukraine stagnation goes on until it defines itself geopolitically" / / UNIAN, 12.02.2013: <http://www.unian.net/news/552764-politolog-ukraina-budet-v-stagnatsii-poka-ne-opredelitsya-geopoliticheski.html>, accessed 15.02.2013).

<sup>3</sup> For more details on the evolution of Ukrainian state policy related to migration - see KARIM-East explanatory note "The development of circular mobility: Observations on Ukraine," [http://www.carim-east.eu/media/exno/Explanatory%20Notes\\_2012-95.pdf](http://www.carim-east.eu/media/exno/Explanatory%20Notes_2012-95.pdf), accessed 15.01.2013.

<sup>4</sup> The standard procedure is applied to all categories of persons who have illegally entered or are illegally staying in the territory of the country, if 48 hours have passed since entry and it has not been established when and in what way their entry occurred. This procedure involves inquiries being made to the other country, and thereafter awaiting its response for quite a long period, but not exceeding one year. The shortened procedure allows the return of illegal migrants in cases where they are detected within 48 hours of their illegal entry. See: the order of 12.11.2010, № 552/862 "On the Approval of the Internal Affairs Agencies' and State Border Services' operating procedures for the implementation of the provisions of the Readmission Agreement between Ukraine and the European Community" [«Про затвердження

- 2) the level of target State budgeting for the agencies involved in readmission being insufficient to organize their fully-flown operation (this situation is conditioned not only by the current economic crisis in the country, but also by the lack of motivation to implement complex and costly reforms of migration regulation);<sup>5</sup>
- 3) the problems of staffing, corruption and ‘protection’ (‘kryshevanie’) in illegal migration “in all the law enforcement agencies involved in its containment”;<sup>6</sup>
- 4) the absence of a comprehensive program for the development of efficient and coherent mechanisms for readmission, return and reintegration based on international experience and involving:
  - a) a clear legal framework (in particular, Ukraine has to set itself rules for ‘aligning’ its legislation, whether it be harmonized with the legislation of the EU or the Russian Federation, and geopolitical alliances, formed around these);<sup>7</sup>
  - b) a unified monitoring system with a centralized databank on different groups of migrants and, in particular, on returning migrants (as of now, there is no uniform system for their registration);
  - c) professional training of specialized staff for the control of entry, residence, social security, legal support, employment and exit / movement of various migrant groups;
  - d) permanent cooperation with competent migration authorities for systematic control over the proper observance of migrants’ rights, prevention of corrupt

(Contd.)

Інструкції про порядок дій органів внутрішніх справ та органів охорони державного кордону з реалізації положень Угоди між Україною та Європейським Співтовариством про реадмісію»]  
[http://search.ligazakon.ua/l\\_doc2.nsf/link1/RE18521.html](http://search.ligazakon.ua/l_doc2.nsf/link1/RE18521.html), accessed 15.01.2013.

<sup>5</sup> In 2008-2009 the State Budget of Ukraine allowed about 4 million hryvnias for the readmission of foreign nationals, including 3 million for the needs of the Ministry of the Interior, and about one million for the needs of the State Border Service (which amounted to about USD 600 million in total at 2008/2009 exchange rates, with the average cost of sending a foreign migrant to his home country being USD 400 to 600 for the year indicated; this does not include the costs of maintenance in the places of detention, which can last for about one year). Insufficient funding, as indicated by the management of migration authorities, is compensated by funding from voluntary return programs with the involvement of the resources of IOM and other non-governmental organizations. Expenses are reimbursed at the expense of the illegal migrants themselves, of persons promoting their return and at the expense of Governments of the third countries. See: “An interview with the Deputy Minister of Internal Affairs of Ukraine in 2008-2010, Vasiliy Marmazov” // UNIAN, 18.12.2009: <http://www.unian.ua/news/352811-readmisiya-yakscho-lyudina-shoja-na-afrikantsyatsene-oznachae-scho-vona-z-afriki.htm>, accessed 15.01.2013. It should be noted that the State Budgets for 2012 and 2013 envisaged the costs of providing for the migration-related activities of the Ministry of the Interior and the State Border Service, including basic spending for the staff, without detailing the costs of readmission.

<sup>6</sup> See: Chumak V. (2010) “Readmission is not as ‘fearsome’ as is usually depicted” [Чумак В. «Не така страшна реадмісія, як її малюють»] // *ZN.UA №40*. [http://gazeta.dt.ua/POLITICS/ne\\_taka\\_strashna\\_readmisiya\\_yak\\_yiyi\\_malyuyut.html](http://gazeta.dt.ua/POLITICS/ne_taka_strashna_readmisiya_yak_yiyi_malyuyut.html), accessed 15.01.2013.

<sup>7</sup> Coordination of norms, envisaged by legal acts of different countries, aims to achieve uniformity of legal regulation and implies greater affinity of their legislation (joint development of common programs in a particular area), or its harmonization through the introduction of common legal principles (see *Private International Law*, <http://rospotrebnadzorrel.ru/pages&id=48>, accessed 15.01.2013). The Law of Ukraine of 18 March 2004 “On the National Program of adaptation of Ukrainian legislation to legislation of the EU” involves the implementation of an appropriate, comprehensive program as a component of Ukraine’s acquisition of EU membership (see the text of the Law at: [http://search.ligazakon.ua/l\\_doc2.nsf/link1/T041629.html](http://search.ligazakon.ua/l_doc2.nsf/link1/T041629.html), accessed 15.01.2013). However, first, at the current stage of the program on immigration, migration legislation is not allocated as a priority area of coordination (see Section 5 of the Law), and second, as already mentioned above, the prospects of Ukraine’s European integration have triggered serious discussions on the circumstances of Ukraine possibly joining the protocol establishing the Customs Union (see *Ukraine can join the protocol on the establishment of the Customs Union in July*, [http://ria.ru/trend/\\_TS\\_Ukraine\\_07042011/](http://ria.ru/trend/_TS_Ukraine_07042011/), accessed 20.03.2013), which could close the path to Ukraine’s association with the EU (see in 2013 Ukraine will have to choose the direction of its integration, <http://rian.com.ua/politics/20130110/336668483.html>, accessed 15.02.2013).

practices at checkpoints and other key ‘points’ of migration management,<sup>8</sup> as well as the complete integration of readmission, return and reintegration programs into international migration policies. So far, the missions of international organizations in this field have been only fragmentary in character.<sup>9</sup>

The political context of the issues of readmission, return and reintegration of migrants is further complicated by the mixed assessment, both within the country and abroad, of Ukrainian prospects in relation to the liberalization of the visa regime with the EU (more on this - see pp. 3-4). Despite the European Union’s adoption of the Plan for the liberalization of the visa regime with Ukraine, and Ukraine’s implementation of a significant part of its legislative provisions,<sup>10</sup> the phase of final implementation has been delayed. In December 2012, the Council of the EU Foreign Affairs Council stressed that the introduction of visa-free travel is only possible on the condition that “well-administered and secure mobility is ensured.”<sup>11</sup>

The public discourse has rightly pointed out that the existing internal critical political conditions and the absence of clear integration priorities in foreign policy make it difficult to promote constructive dialogue with the international community and, in particular, disrupt dialogue between Ukraine and the EU aimed at reforming national migration policies.<sup>12</sup>

## The readmission space

Assessing the scale of movements that must be considered for the development and implementation of readmission agreements, experts have pointed out that the main inflow (90%) of potentially irregular migrants is stopped at Ukraine’s eastern borders with the Russian Federation, the Republic of Moldova and Belarus.<sup>13</sup> As a result, Ukraine “is losing its appeal as a transit country to the EU countries” both for the migrants and organizers of trafficking. Therefore, the official scale of illegal migration and the

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<sup>8</sup> In addition to work at checkpoints, areas of work with migrants here include the arrangement of various permits for registration, employment and health care. At all ‘points’ of work, numerous organizations are involved which provide management related to employment, entrepreneurship, social security and health care.

<sup>9</sup> In particular, within the framework of the EU-funded SIREADA project, designed to assist the implementation of the Readmission Agreement between the EU and Ukraine, Moldova and the Russian Federation, IOM had organized its monitoring mission in institutions of detention for irregular migrants. By September 1 2012, international organizations had completely transferred the power to ensure the basic needs of the migrants at the points of their temporary stay and detention to the governments of Moldova and Ukraine. Legal aid to the detained migrants from international organizations within SIREADA project lasted until February 2013. See: “Monitoring mission has checked the detention points for irregular migrants in Transcarpathia” [«Моніторингова місія перевірила

пункти тримання не врегульованих мігрантів на Закарпатті] // IOM, 25.04.2012, [www.iom.org.ua/ua/home-page/342/](http://www.iom.org.ua/ua/home-page/342/), accessed 15.01.2013.

<sup>10</sup> On the implementation of the ‘legislative’ phase of the Plan of Events for the liberalization of the EU visa regime with Ukraine by the related ministries and agencies, see: <http://minfin.com.ua/2011/10/13/472456/>, accessed 15.01.2013.

<sup>11</sup> EU reaffirms its commitment to achieve visa-free regime with Ukraine // *Europe without barriers*, 10.12.2012, [http://novisa.org.ua/en/news/?news\\_id=288](http://novisa.org.ua/en/news/?news_id=288), accessed 15.01.2013.

<sup>12</sup> See: Chumak V., Kazmirkevitch P. “What lessons can Ukraine learn from the reform of migration policies in Poland?” [Чумак В., Казьміркевіч П. (2010), Які уроки може отримати Україна з реформування міграційної політики в Польщі?] / *Institute of Public Policy*, 23.07.2012, <http://uipp.org.ua/multimedia/presentation.htm>, accessed 15.01.2013.

<sup>13</sup> In 2009, 19,700 people were prevented from entering Ukraine based on the results of the interviews; in the first half of 2010 - i.e. in the first six months after the Readmission Agreement with the EU came into force – those denied entry amounted to 9,200 people. Data from the Ministry of the Interior - see V. Chumak (2010) *UNHCR UN Refugee Agency, Transcarpathian Region as of 1 September 2012* [http://unhcr.org.ua/attachments/article/244/Zakarpattya%20UKR\\_\\_1\\_Sep\\_upd\\_DB.pdf](http://unhcr.org.ua/attachments/article/244/Zakarpattya%20UKR__1_Sep_upd_DB.pdf), accessed 15.01.2013.

number of persons being readmitted have not tended to increase, quite contrary to predictions made.<sup>14</sup> According to official reports, the majority of persons accepted according to the standard and shortened readmission procedures, mainly at the country's western borders -that is, coming from the EU- are Ukrainian nationals. For example, in the first nine months of 2010, 800 people were accepted according to the standard readmission procedure (all of them Ukrainian nationals), and 573 people according to the shortened procedure (including 357 citizens of Ukraine, 157 citizens of CIS countries and 89 citizens of other countries).<sup>15</sup> However, against a background of official statistics, one should not underestimate the scale of external and internal transit movements of Ukrainian citizens, citizens of the CIS countries and third country nationals.<sup>16</sup>

To date, readmission agreements between Ukraine and other countries, that is, mutual obligations to accept and transfer to authorized agencies its own nationals, third-country nationals and stateless persons who illegally enter the territory of one of the contracting parties via the territory of the other contracting party or who stay there without legal grounds, are at various stages of preparation and implementation.

Since 1997 four agreements with the CIS countries (which, according to experts, remain the principal channels of irregular migration into the territory of Ukraine<sup>17</sup>) have been signed, ratified and have formally come into force: with Georgia, Uzbekistan, Turkmenistan and Moldova. An agreement with the Russian Federation, the territory from which up to 80% of irregular migrants enter Ukrainian territory, is one of the key agreements in the context of migration processes within the CIS. It was signed in 2006 and since 2008 has had the status of currently active. An executive protocol on readmission procedure between Ukraine and the Russian Federation was signed at the end of 2012. 'Technical testing' of this issue is currently underway.<sup>18</sup> An agreement with Armenia is still being developed. The negotiations on readmission agreements with Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan and the Republic of Belarus have not yet been concluded.

An agreement with the EU, in part related to the readmission of Ukrainian nationals and of EU citizens who have violated the laws of the agreement's parties, has been in force since 2007. Over the past 20 years, seven readmission agreements have at different times been signed, ratified and have formally come into force. These include agreements reached with Hungary, Poland, Slovakia, Lithuania, Latvia, Bulgaria and Denmark. Bilateral negotiations with Austria and Belgium on the coordination of readmission implementation mechanisms continue, as well as with Switzerland, which is not part of the EU, but participates in the Schengen zone. Ways to improve and update the existing

<sup>14</sup> See, for example, Golbin N. "The Readmission's 'Fruits' for Ukraine" [Гольбин Н., Плоды «реадмиссии» для Украины] // *MINFIN*, 12.06.2012 <http://minfin.com.ua/blogs/uassistance/26416/> accessed 15.01.2013.

<sup>15</sup> Including: 274 people at the border with Poland; 206 at the border with Slovakia; 54 at the Hungarian border; 39 at the Romanian border. See: State Border Service Data – Chumak V. (2010) "Ukraine's migration Policy: Step Forward, Two Steps Back" // Public Policy Institute [Чумак В. (2010), Міграційна політика України: крок вперед, два назад // Інститут публічної політики] [http://uipp.org.ua/uploads/news\\_message/at\\_file\\_uk/0071/12.pdf](http://uipp.org.ua/uploads/news_message/at_file_uk/0071/12.pdf), accessed 15.01.2013.

<sup>16</sup> In assessing the scale of illegal migration one should take into account the number of illegal immigrants detected by the Ministry of Interior within the country. For example, in 2007 they amounted to 12,600 people. See: "Transit Illegal Migration and Transit Countries: Theory, Practice and Regulation Policies" (2009), ed. by I. Molodikovoy and F. Dyuvelya, Moscow (section 'Ukraine') [Транзитная нелегальная миграция и транзитные страны: теория, практика и политика регулирования (2009), под ред. И.Молодиковой и Ф.Дювеля, Москва (раздел «Украина»)] <http://rudocs.exdat.com/docs/index-347281.html?page=3>, accessed 15.01.2013.

<sup>17</sup> Interview with the Deputy Minister of the Interior of Ukraine in 2008-2010 Vasily Marmazov // UNIAN, 18.12.2009, <http://www.unian.ua/news/352811-readmisiya-yakscho-lyudina-shoja-na-afrikantsya-tse-ne-oznachae-scho-vona-z-afriki.html>, accessed 15.01.2013.

<sup>18</sup> As commented by the Deputy Chairman of the Migration Service of Ukraine, Victor Sheibut, on 06.02.2013, [http://www.ukrinform.ua/ukr/news/ukraina\\_spodivae\\_tsya\\_na\\_ugodu\\_pro\\_readmisiyu\\_z\\_rf\\_vge\\_naybligchim\\_chasom\\_1794451](http://www.ukrinform.ua/ukr/news/ukraina_spodivae_tsya_na_ugodu_pro_readmisiyu_z_rf_vge_naybligchim_chasom_1794451), accessed 15.02.2013. He refers to the implementation section of the Protocol, including the detailing of functions of the responsible agencies, definition of budgetary components of their activities, etc.

readmission programs are being discussed with Slovakia and Poland. Between 2008 and 2010, proposals to discuss the provisions of the draft implementation protocols with Estonia, Malta and Portugal were put forward, but so far the negotiations have not progressed to their final phase.

As part of the readmission of third country nationals and stateless persons, a framework agreement with the EU came into force in January 2010. It is this aspect –that of shaping the European part of the readmission space- that has provoked the most intense political debate, with the active participation of the opposition forces in Ukraine. In particular, a member of the All-Ukrainian Union ‘Freedom,’ whose representatives also sit in the Parliament, who is also the former head of the State Committee for Ethnic Affairs and Migration, Sergey Rudyk announced that Ukraine must terminate the readmission agreement with the EU, because the irreciprocal nature of its implementation runs contrary to the interests of the Ukrainian state.<sup>19</sup> Following this declaration, in the autumn and winter of 2010 protests organized by ‘Freedom’ against the influx of irregular migrants from the EU to Ukraine were held in all the major cities of Ukraine. The leader of the ‘Freedom’ group and one of the most active opposition speakers, Oleg Tyagnibok claimed that the implementation of readmission agreements with the EU would result in a ‘catastrophe’: “[e]xperts have counted that only the first wave of illegal migrants, who will be sent to Ukraine, will reach 150,000 people! Belarus, by the way, did not agree to readmit their illegal migrants and everything, thus, suggests that Belarusian illegal migrants ‘on the sly’ will also be sent to us.”<sup>20</sup> The radical rightist ideology propagated by ‘Freedom’ resonates with the sentiments of the residents of areas bordering the EU, who actively protest against the implementation of readmission programs in their communities. In particular, in February 2011, residents of a small town called Chop came to the gates of the local border service, who were at that moment expecting a visit from a Representative of the UN High Commissioner for Refugees, and demanded that the construction of the temporary detention point for irregular migrants near the local school be halted. The mayor of the city, who was not invited to the meeting, transmitted the city authorities’ point of view through mass media: “Our deputies have unanimously forbidden the construction of a detention point for illegal migrants in our town’s territory. If the state assumed a commitment in this respect, then it should realize that such facilities should not be located within the confines of urban or rural settlements, least so near schools.”<sup>21</sup>

Thus, the greatest public discussions in the context of shaping a single civilized readmission procedure are triggered, above all, by relatively small groups of irregular migrants – ‘non-citizens’ of Ukraine or CIS: immigrants from China, Vietnam, Pakistan, Afghanistan, Nigeria, Egypt, Somalia, and other African countries.<sup>22</sup> Signing, ratifying and enacting agreements with this group of countries will not only improve the mechanisms for the readmission of irregular migrants to their countries of origin, but will also minimize the growing risk of xenophobia and radicalization in Ukrainian society caused by fears of an influx of large numbers of irregular migrants.<sup>23</sup>

<sup>19</sup> See: Ukraine has to break the readmission agreement with the EU or close the border with Russia, *the official website of the Ukrainian Union ‘Freedom’* [Україна має розірвати Угоду про реадмісію з ЄС або закрити кордон з Росією] 15.03.2012, <http://www.svoboda.org.ua/diyalnist/novyny/028548/>, accessed 15.01.2013.

<sup>20</sup> See: “The Readmission Treaty - a crime against the nation” [Угода про реадмісію – злочинпроти нації] // *POLITIKO*, 15.12.2010 <http://politiko.ua/blogpost14828>, accessed 15.01.2013.

<sup>21</sup> “The residents of the border town Chop have clearly answered ‘No!’ to the detention point for illegal migrants” [Жителі прикордонного Чопа сказали категоричне «Ні!» пункту тимчасового утримання нелегалів] // *ZAKARPATPOST.NET*, 16.02.2011 <http://zakarpatpost.net/2011/02/16/zakarpattyia-zhyteli-prykordonnoho-chopa-skazaly-katehorychne-ni-punktu-tymchasovoho-utrymannya-nelehaliv/>, accessed 15.01.2013.

<sup>22</sup> Reference to the data of the Ministry of the Interior in an interview with the Deputy Minister in 2008-2010 Vasiy Marmazov // *UNIAN*, 18.12.2009 <http://www.unian.ua/news/352811-readmisiya-yakscho-lyudina-shoja-na-afrikantsyats-ne-oznachae-scho-vona-z-afriki.html>, accessed 15.01.2013.

<sup>23</sup> For example, the Readmission Agreement between the EU and Pakistan allows the competent EU authorities to transfer irregular migrants (citizens of Pakistan), in particular those that enter EU territory from Ukraine, directly back to their country of citizenship.

Within the framework of concluding agreements with third countries, Ukraine embarked on negotiations with Bangladesh, India, Iran, Iraq, Sri Lanka, China and Afghanistan, all of which are potential ‘supplier countries’ of irregular migrants.<sup>24</sup> In 2008 the draft agreement on readmission and draft executive protocol was drawn up and sent via diplomatic channels to the competent authorities of these countries. An agreement is also being developed with another country which tends to ‘supply’ irregular migrants – Lebanon. Between 2005 and 2009, agreements with Vietnam and Turkey were also signed, ratified and enacted.<sup>25</sup>

## The state of development of the return and readmission programs

Despite the fact that Ukraine has in recent years been a transit country to the EU and a recipient country for foreign refugees and irregular migrants,<sup>26</sup> it is actually the return migration of Ukrainian citizens and migrants from the CIS countries, as well as the problems related to their social (re)integration, that present a considerably more substantial challenge to Ukrainian national interests. Because of the low levels of competition in the Ukrainian labor market and the instability of the business environment, the inflow of ethnic migrants from third countries planning to remain in Ukraine to live and work has been quite insignificant thus far.<sup>27</sup> The future plans of the majority of ‘aliens’, who do not identify themselves with Ukraine as a country of origin, as a rule, do not include participation in the domestic labor market or full involvement in the political or cultural processes in Ukraine, which they consider as merely their ‘temporary residence.’<sup>28</sup> At the same time, the return migration of former compatriots carries with it considerable potential for the recruitment of skilled workers and an improvement in the demographic situation in the country.<sup>29</sup>

<sup>24</sup> See: *UNHCR UN Refugee Agency, Transcarpathian region as of 1 September 2012* [Закарпатська область станом на 1 вересня 2012 р.] [http://unhcr.org.ua/attachments/article/244/Zakarpattia%20UKR\\_\\_1\\_Sep\\_upd\\_DB.pdf](http://unhcr.org.ua/attachments/article/244/Zakarpattia%20UKR__1_Sep_upd_DB.pdf), accessed 15.01.2013.

<sup>25</sup> The agreement with Turkey was signed in 2005, ratified in 2006 and came into force in 2008. The agreement with Vietnam was signed in 2007, ratified in 2008 and came into force in 2009. Currently the draft Implementation Agreement Protocol received from the Vietnamese side is being finalized. See: *The State Border Service of Ukraine. Readmission Legal Base* <http://dmsu.gov.ua/normatyvna-baza/mizhnarodni-dokumenty/readmisiia>, accessed 15.01.2013.

<sup>26</sup> For more detail on this - see the CARIM EAST article “Socio-political Outcomes of Labor Migration in Ukraine in the Mirror of Sociological Analysis” [Соціально-політичні наслідки трудової міграції в Україні в зеркалі соціологічного аналізу], <http://www.carim-east.eu/media/CARIM-East-2012-RU-18.pdf>, accessed 15.01.2013.

<sup>27</sup> According to the State Statistics Service of Ukraine, in January-November 2011, among the migrants that arrived in the country’s territory (about 15 thousand), 76.8% were migrants from the CIS countries and 23.2% were from other countries. However, as the data based on in-depth interviews with newly arrived persons suggests, for a large number of migrants the stay in Ukraine is conditioned by economic reasons and is therefore temporary. See: “Socio-economic Situation in Ukraine in 2011” [Соціально-економічне становище України за 2011 рік] // *Governmental Courier* [Урядовий кур’єр], No 19, February 1, 2012, p.17; Boksha T. and others., *Criminalization of Migration in Kiev* [Криміналізація міграції в Києві] // *Спільне*, No 1, 2010, p. 79, 80.

<sup>28</sup> For example, according to the Office of the UN High Commissioner (UNHCR) for Refugee Affairs, on 1 September 2012 in Transcarpathia region, 418 applicants for refugee status were registered by the UNHCR’s executive partner in “Karpat-NEEKA” region at temporary residence points, of whom 39% were from Afghanistan, 42% from Somalia, with the remaining 19% from Iraq, Palestine, Iran, Pakistan, Russia and Africa. In the period from 1997 to 2011, 36 people were granted refugee status and moved to Uzhgorod, Kiev or Odessa in search of jobs and subsequent assimilation. In 2011, 240 people were transferred to Ukraine, 164 of whom were citizens of the CIS countries and 76 who were third-country nationals. Also registered were cases of readmission to Ukraine as refugee status applicants, including 38 persons from the territory of Hungary, 3 - of Slovakia, 3 - of Poland, who had been denied refugee status at these locations and were finally returned to Ukraine. In 2012, 7 people were returned to Ukraine as part of the readmission procedure following the refusal to consider their applications for refugee status. See: *UNHCR UN Refugee Agency, Transcarpathian Region as of 1 September 2012*, [http://unhcr.org.ua/attachments/article/244/Zakarpattia%20UKR\\_\\_1\\_Sep\\_upd\\_DB.pdf](http://unhcr.org.ua/attachments/article/244/Zakarpattia%20UKR__1_Sep_upd_DB.pdf), accessed 15.01.2013.

<sup>29</sup> Libanova E. Speech at a public debate “Is emigration of skilled labor good for Ukraine’s economy?,” [«Еміграція висококваліфікованих кадрів полезна для економіки України?»] 22.09.2011, “Efficient Administration”

Despite the Cabinet of Ministers of Ukraine's adoption in 2011 of a 'Plan of events for migrants' integration into the Ukrainian society',<sup>30</sup> designed to ensure adequate reception for the return migration flow, Ukraine has neither preferential programs for business start-ups for returning migrants nor special tax exemptions for those planning to invest their money in the local economy.<sup>31</sup> As of now, Ukraine has no established state institutions offering information, organizational and legal assistance to returned migrants and their families. The state budget for 2013 was adopted recently and, similarly to all previous budgets of Ukraine, envisages no separate articles to finance these activities.<sup>32</sup>

Constructive proposals for the development of national policies related to return migration can be made after the parliamentary hearings on the matter have been initialized, return migration has been instituted as a separate object of migration policies and a legal and institutional framework for the implementation of target return and reintegration programs has been established.

## Brief conclusions and recommendations.

The ambivalent socio-political processes that have accompanied the formulation of the Ukrainian position on the readmission of various migrant groups from the EU, CIS and other countries have determined a high risk of the formation of a marginalized readmission space<sup>33</sup> in its territory. Despite the slow but steady progress made in the discussion on and development of a multilateral legal framework in this field, the institutional and implementation gap between what is currently in place in Ukraine and internationally accepted standards for readmission,<sup>34</sup> return and reintegration remains essential. The high levels of xenophobia among the population of Ukraine in relation to certain ethnic

(Contd.)

Foundation; Pribytkova I. (2002), "Labour Migrants in the Social Hierarchy of the Ukrainian Society: Status Positions, Values, Life Strategies, Style and Way of Life" [«Трудовые мигранты в социальной иерархии украинского общества: статусные позиции, ценности, жизненные стратегии, стиль и образ жизни»]// Sociology: Theory, Methods, Marketing, Kiev, № 4, pp.156-167.

<sup>30</sup> Decree No 653-p of 15 June 2011 on the approval of the working plan for 2011-2015, in particular, envisages "informing the Ukrainian migrants who have returned to Ukraine, including informing via the Internet, on the issues of employment, entrepreneurship, social and health services (responsible agencies: the Ministry of Foreign Affairs, Ministry of Economic Development, Ministry of the Interior, State Migration Service of Ukraine, Ministry of Social Policy, Ministry of Culture, Ministry of Youth and Sports, Ministry of Public Health, the Pension Fund of Ukraine), as well as the "provision of psychological support to the Ukrainian migrants who have returned to Ukraine" (responsible agencies: the Ministry of Youth and sports, Ministry of Public Health, Ministry of Social Policy, Ministry of the Interior, State Customs Service, the Council of Ministers of the Autonomous Republic of Crimea, regional administrations, Kyiv and Sevastopol city administrations). See: <http://document.ua/pro-zatverdzhennja-planu-zahodiv-shodo-integraciyi-migrantiv-doc61615.html>, accessed 15.01.2013.

<sup>31</sup> A more detailed analysis of the problematic aspects of Ukraine's reintegration policies is given in a CARIM-East article: "Eternal Return: Current Problems of Social Reintegration of Ukrainian Labor Migrants Returning from the EU to Ukraine (on the results of case studies)." [«Вечное возвращение: современные проблемы социальной реинтеграции украинских трудовых мигрантов, прибывающих из ЕС в Украину (по результатам социологических исследований)»] See: <http://www.carim-east.eu/publications/research-reports/impact-of-labour-migration-on-countries-of-origin-and-destination/>, accessed 15.01.2013.

<sup>32</sup> It should be noted that the promotion of the employment of migrant workers has also been stipulated by the bilateral agreements with Moldova, the Russian Federation, Belarus, Azerbaijan and Armenia. See: The State Employment Service of Ukraine, <http://www.dcz.gov.ua/>, accessed 15.01.2013. However, the practical implementation of this clause in a situation of rapid production decline and labor market crisis is highly problematic.

<sup>33</sup> It is implied that the space for migration processes is characterized by a lack of clear rules of movement and the ambiguity of the principles that guide the local control agencies. Ukraine, as a society in transition, needs to develop civil society mechanisms and strict compliance with legal rules independent of the current political situation or bureaucratic powers, which will be employed for *ad hoc* decisions related to migration management.

<sup>34</sup> See: "Readmission Guidelines: Readmission and Return Experience of Selected Countries" (2009). [Руководство по реадмиссии: опыт избранных стран по вопросам реадмиссии и возвращения] International Organization for Migration, Moscow, pp.45-100, [http://publications.iom.int/bookstore/free/manual\\_on\\_readmission1\\_RU.pdf](http://publications.iom.int/bookstore/free/manual_on_readmission1_RU.pdf), accessed 15.01.2013.

groups,<sup>35</sup> heated by the radical nationalist movements gaining popularity, have created geopolitical and societal conditions for the diversion of public perception in a direction unfavorable to the future of the Ukrainian state and society. The current actualization of the strategic goals of the 'Eastern Partnership' could be an incentive for Ukraine to harmonize its political and legal systems, as well as to mobilize public resources for the implementation of comprehensive reforms related to migration.<sup>36</sup>

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<sup>35</sup> See data on the index of national distancing dynamics in "Ukrainian Society 1992-2012. Status and trends change. Sociological Monitoring" (2012) [*Українське суспільство 1992-2012. Стан та динаміка змін. Соціологічний моніторинг*], Ed. By W. Crow and M. Shulga, Kyiv: Institute of Sociology of NAS of Ukraine, pp. 566-578

<sup>36</sup> See also: Chumak V (2012) "Ukrainian Migration Policy: Step Forward, Two Steps Back" [Міграційна політика України: крок вперед, два кроки назад] // Public Policy Institute [http://uipp.org.ua/uploads/news\\_message/at\\_file\\_uk/0071/12.pdf](http://uipp.org.ua/uploads/news_message/at_file_uk/0071/12.pdf), accessed 15.01.2013.



## **CHAPTER 6**

### **Trafficking in The Human beings**



# **Human Trafficking in Belarus**

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Human trafficking is still a pressing issue for Belarus, despite its efforts to prevent it and the country's accession to international conventions. Belarus was, in fact, the first among CIS countries to start an active combat against human trafficking. In the human trafficking context it can be regarded as a donor for many countries, and Russia is a leader among them.

The Ministry of Interior is the main source of information about human exploitation offenses, hence available statistics mostly represent the results of criminal investigations.

We have assessed the situation focusing on the following aspects:

- Crimes against personal freedom
- Human-trafficking victims
- Exploitation channels

### Crimes against personal freedom

All offenses can be divided into two main groups:

1. Offenses associated with labor exploitation;
2. Offenses associated with sexual exploitation.

Under the Belarusian Criminal Code, **human exploitation** is understood as the illegal coercion of a person to perform work or render services, if this person for reasons beyond his or her control cannot refuse to perform work (render services). This definition includes slavery or practices similar to slavery. **Sexual exploitation** is understood as profiting from actions of sexual nature performed by another person, including prostitution.

3,664 crimes associated with exploitation were identified in Belarus in 2000-2012, including 3,533 associated with sexual and 130 with labor exploitation. There is a more detailed classification, but one should note that the type of exploitation is not singled out there. For instance, this is true for human trafficking and abduction. The dynamics of crimes against personal freedom for 2000-2012 is provided in table 1.

Under the Belarusian Criminal Code, **trafficking in persons** means purchase and sale of a human being or other transactions with regards to a human being, as well as recruitment, transportation, transfer, harbouring or receipt of a human being for the purpose of exploitation; **abduction of a human being** means the illicit taking of a person, covert, open, by way of deceit or betrayal of trust, or combined with violence or threat of violence or other forms of coercion, without essential crime elements.

**Table 1. Crimes associated with human trafficking identified in Belarus in 2000-2012.**

	Human trafficking	Use of slave labor	Abduction of a human being	Illicit actions aimed at employment of citizens abroad	Use of prostitution	Involvement in prostitution
2000	0	-	0	-	149	0
2001	7	-	0	-	186	0
2002	22	-	2	-	342	47
2003	35	-	7	-	347	99
2004	92	-	4	-	331	128
2005	159	-	10	6	150	44
2006	95	-	7	16	115	61
2007	84	-	8	4	115	57
2008	69	-	6	14	87	34
2009	61	1	7	4	107	39
2010	39	1	5	0	123	49
2011	9	0	2	1	116	41
2012	8	1	0	0	76	35
<b>Total</b>	<b>680</b>	<b>3</b>	<b>58</b>	<b>45</b>	<b>2244</b>	<b>634</b>

Source: data of the Belarusian Ministry of Interior

As one can see from the table, almost 80% of crimes are related to prostitution. The joint work of law enforcement agencies and non-governmental organizations have reduced this problem since 2005. The remaining 20% of crimes are related to human trafficking and abduction. 1,600 crimes against personal freedom associated with the export of persons from Belarus were identified from 2001 to 2012.

### Human trafficking victims

Records concerning human trafficking victims in Belarus have been kept since 2002. 4,900 persons were registered from 2002 to 2012, 88% of them were victims of sexual exploitation and 12% - of labor exploitation (table 2). One should mention that criminal investigation into a notorious modeling business case lasted two years and finished only in 2006. This case dealt with sexual exploitation of persons, mostly minors.

**Table 2. Crimes associated with human trafficking identified in Belarus from 2000 to 2012.**

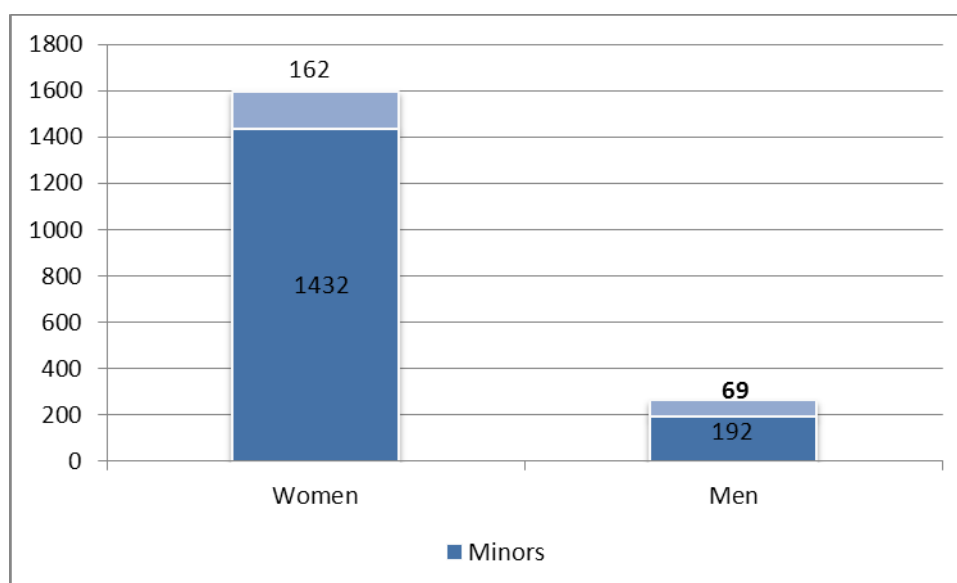
	Type of exploitation		Place of exploitation	
	sexual	labor	overseas	In Belarus
2002	100	0	-	-
2003	350	0	-	-
2004	400	0	-	-
2005	365	260	-	-
2006	1011	96	998	109
2007	378	40	338	80
2008	458	133	345	246
2009	369	29	291	107
2010	345	14	182	180
2011	387	8	142	153
2012	208	1	85	124

Source: data of the Belarusian Ministry of Interior

Furthermore, 70% of victims were subjected to exploitation overseas, though during the last two years Belarus prevailed as the place of exploitation. The study of the distribution of labor exploitation victims by place of exploitation demonstrated that 96% of crimes had been committed overseas.

Records of underage human trafficking victims have been kept since 2005. 530 children subjected to sexual exploitation and seven subjected to labor exploitation were registered in Belarus between 2005 and 2012.

As for the distribution of human trafficking victims by gender, women and girls are the ones who are exploited most often (figure 1). The total number of female victims of sexual and labor exploitation was 1,594 in 2008-2012, 10% were underage.

**Figure 1. Exploitation victims by gender for 2008-2012**

Nevertheless, the number of men was also significant – 261 victims in total, and the share of underage victims among men was 2.5 times higher than among women, i.e. 26%.

### **Exploitation channels**

The main export channels of Belarusian nationals for the purpose of exploitation (they accounted for 80% of all closed channels in 2005-2012) were Russia (55%), Poland (10%), Turkey (10%) and Germany (5%). 610 channels were shut down.

One should draw the reader's attention to the fact that human organ trafficking is not a pressing issue for Belarus. Only three victims whose organs were removed were identified in 2002-2012, all of them in 2010.

At present, despite certain successes in the field of the prevention and suppression of human trafficking, this problem remains a priority for law enforcement agencies, state security bodies and for the UN office in Belarus.

### **List of sources used**

Criminal Code of the Republic of Belarus, 9 July 1999 No. 275-Z with amendments.



**Legal Aspects of Combat  
Against Human Trafficking  
in the Republic of Belarus**

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## **1. Participation of Belarus in international treaties that serve as a basis for combat against trafficking in human beings**

Belarus joined a number of international treaties aimed at combat against slavery and human trafficking. During the Soviet period Belarus signed the 1926 Convention “On slavery”<sup>1</sup>, 1948 Universal Declaration of Human Rights<sup>2</sup> and 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery<sup>3</sup>, International Covenant on Civil and Political Rights<sup>4</sup> adopted by the UN General Assembly on 16 December 1966<sup>5</sup>.

Relying on the principles set forth in these international legal documents, the Constitution of Belarus states that a person, his or her rights, freedoms and guarantees of their implementation are recognized as the highest value for society and state (article 1 of the Constitution), and under article 25 of the Constitution the state guarantees freedom, inviolability and dignity of a person<sup>6</sup>.

Let us specifically mention that Belarus also joined a number of international acts protecting children from all forms of sexual exploitation (that is considered a contemporary form of slavery and is equated with forced labor) and sexual seduction: 1989 Convention on the Rights of the Child<sup>7</sup>, 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict<sup>8</sup>, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography<sup>9</sup>, 1999 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour<sup>10</sup>.

In the field of combat against trafficking in women Belarus joined the 1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others<sup>11</sup>, 1979 UN Convention on the Elimination of All Forms of Discrimination against Women<sup>12</sup>. Let us note that all the main provisions of these international treaties found adequate reflection in the current criminal legislation of Belarus. Thus, there are such criminal offenses as human trafficking for the purpose of

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<sup>1</sup> Ratified by the Regulation of the Belarusian Cabinet of Ministers of 27.08.1956 No. 509 “On Accession of the Belorussian SSR to the Convention on Slavery”.

<sup>2</sup> Declaration in article 4 announced complete ban on slavery: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms”.

<sup>3</sup> Ratified by the Decree of the Supreme Council Presidium of the Republic of Belarus of 30.04.1957 “On Ratification of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery”.

<sup>4</sup> Article 8 of the Covenant declared the ban on slavery, slave trade, and servitude.

<sup>5</sup> Ratified by the Decree of the Supreme Council Presidium of the Republic of Belarus of 05.10.1973 “On ratification of the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights”.

<sup>6</sup> Constitution of the Republic of Belarus of 1994 (with amendments adopted at republican referendums on 24.11.1996 and 17.10.2004).

<sup>7</sup> Ratified by the Regulation of the Supreme Council of the Republic of Belarus of 28.07.1990 No. 217-XII “On ratification of the Convention on the Rights of the Child”.

<sup>8</sup> The Law of the Republic of Belarus of 12.12.2005 No. 67-Z “On Accession of the Republic of Belarus to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict”.

<sup>9</sup> The Law of the Republic of Belarus of 03.12.2001 No. 65-Z “ON Accession of the Republic of Belarus to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography”.

<sup>10</sup> Ratified by the Law of the Republic of Belarus of 11.07.2000 No. 407-Z “On Ratification of the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention 182)”.

<sup>11</sup> Ratified by the Regulation of the Cabinet of Ministers of the Belorussian SSR of 15.06.1956 No. 323 “ON Accession to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others”.

<sup>12</sup> Ratified by the Decree of the Supreme Council Presidium of the Republic of Belarus of 22.12.1980 No. 728-H “On Ratification of the Convention on the Elimination of All Forms of Discrimination against Women”.

prostitution, procurement (including with a purpose of prostitution), inducement of another person to prostitution (including with this person's consent), exploitation of prostitution by third persons (including with consent of exploited persons), organization and operation of brothels (for use with a purpose of prostitution).

In 2003 Belarus joined the UN Convention against Transnational Organized Crime of 2000<sup>13</sup> and two additional protocols: Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; Protocol against the Smuggling of Migrants by Land, Sea and Air. The main provisions of the Convention found their reflection in the Criminal Code of Belarus. At the same time the issue of criminal liability for legal persons has not yet been resolved. Possibility of such liability is envisaged in paragraph 2 of article 10 of the 2000 UN Palermo Convention. Under Belarusian Criminal Code only a physical person can be a subject. Only physical persons holding corresponding positions are responsible for criminal deeds associated with activities of a legal person. At the same time majority of crimes associated with human trafficking are most often committed using legal persons – tourist agencies, matrimonial agencies, employment agencies, modeling agencies etc. Perpetrators use them obtain foreign passports and visas, search for persons to be sold and for potential buyers.

## **2. Legal foundations of combat against human trafficking at the regional level of CIS**

Agreement on Cooperation of CIS Member States in Combat against Trafficking in Human Beings, Human Organs and Tissues<sup>14</sup> was adopted in 2005. In addition to that, the Inter-Parliamentary Assembly of CIS Member States adopted a model law “On Counteraction to Human Trafficking” in 2008<sup>15</sup>.

The indicated international normative acts are meant to ensure reliable protection from infringements of life and health, rights and freedoms, honor and dignity, as well as create efficient mechanisms for combat against human trafficking and associated deeds. They offer a corresponding terminology based on generally recognized principles of international law in this field.

Agreement on Cooperation of the Ministries of Interior (Police) of the CIS Member States in combat against human trafficking was concluded in 2010, in order to create efficient mechanisms for interaction in combat against human trafficking, its prevention and suppression<sup>16</sup>.

## **3. National legislation of Belarus**

### **3.1 Legal policy of Belarus in the field of combat against human trafficking and associated crimes**

Measures to combat human trafficking in Belarus are developed and carried out in accordance with the state program of counteraction to human trafficking, illegal migration and associated illegal actions for 2011-2013<sup>17</sup>. According to the State Program, counteraction to human trafficking and associated

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<sup>13</sup> Ratified by the Law of the Republic of Belarus of 03.05.2003 No. 195-Z “On Ratification of the United Nations Convention against Transnational Organized Crime” (version of 20.06.2008).

<sup>14</sup> Concluded in Moscow on 25.11.2005. Agreement was approved by the Regulation of the Belarusian Cabinet of Ministers of 09.08.2006 No. 1022.

<sup>15</sup> Regulation of the Inter-Parliamentary Assembly of the CIS Member States of 03.04.2008 No. 30-11 “ON the Model Law “On Counteraction to Human Trafficking”.

<sup>16</sup> Concluded in St. Petersburg on 17.09.2010. Agreement was approved by the Regulation by the Belarusian Council of Ministers of 18.02.2011 No. 210.

<sup>17</sup> Decree of the Belarusian President on 2 October 2010 No. 518 “On the State Program of Counteraction to Human Trafficking, Illegal Migration and Associated Illegal Actions for 2011-2013”.

illegal actions (hereinafter – human trafficking) is recognized as one of priority activities of governmental agencies ensuring national security, public interests, rights, freedoms and legal interests of citizens. It envisages measures to counteract human trafficking at the national level that were developed taking into account the experience of national public agencies (organizations), as well as advanced international practices in this field.

Specific measures to combat human trafficking and set up a system of measures to protect and rehabilitate human trafficking victims in Belarus are regulated by Law No. 350-Z<sup>18</sup> 2012<sup>19</sup>. This Law offers the following main terms and definitions: human trafficking victim, organization involved in human trafficking, crimes associated with human trafficking, counteraction to human trafficking, trafficking in human beings, exploitation<sup>20</sup>. The Law No. 350-Z defines subjects counteracting human trafficking<sup>21</sup>, as well as their scope of authority in the field of combat against human trafficking<sup>22</sup>; and regulates activities of non-governmental, international and foreign organizations in this field<sup>23</sup>.

The Law No. 350-Z determines measures to prevent human trafficking. These measures include licensing of certain types of activity<sup>24</sup>; special requirements with regards to activities of modeling<sup>25</sup> and tourist agencies<sup>26</sup>; regulation of human trafficking prevention measures in the field of information<sup>27</sup> and education<sup>28</sup>.

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<sup>18</sup> The Law of the Republic of Belarus of 07.01.2012 No.350-Z “On Counteraction to Human Trafficking” // National registry of legal acts of the Republic of Belarus, 24.01.2012, No. 10, 2/1902.

<sup>19</sup> Before that law this field was regulated by the Decree of the Belarusian President of 09.03.2005 No. 3 “On Some Measures to Counteract Human Trafficking” and the Decree of the Belarusian President of 08.08.2005 No. 352 “On Prevention of Human Trafficking Consequences”.

<sup>20</sup> Article 1 of the Law No. 350-Z 2012.

<sup>21</sup> Ministry of Interior bodies, state security agencies, border service, prosecutor’s office, Investigating Committee of the Republic of Belarus (article 8 of the Law No. 350-Z 2012).

<sup>22</sup> Articles 6 – 9 of the Law No. 350-Z.

<sup>23</sup> Articles 10 – 11 of the Law No. 350-Z.

<sup>24</sup> Licensing of the following activities: 1) associated with employment of Belarusian citizens outside Belarus; 2) associated with collection and dissemination, including in the Internet, of information on physical persons for the purpose of matchmaking (activities of marriage agencies) – article 14 of the Law No. 350-Z 2012.

<sup>25</sup> Thus, there is a strict procedure of competitive selection of candidates for participation in advertising projects or subsequent employment (castings) – part 1, 2 article 15 of the Law No. 350-Z.

<sup>26</sup> Tourist agencies are obliged to submit to the bodies of internal affairs the information about Belarusian citizens who went on a tour as part of an organized group and did not return to the country after its end, within 5 working days after the group’s return – part 3 article 15 of the Law No. 350-Z 2012.

<sup>27</sup> A crucial measure for prevention of trafficking in children is envisaged in par. 2 of article 16 of the Law No. 350-Z for educational institutions and shared Internet access facilities – ban on providing minors with Internet access to information that is aimed at assisting illegal migration, human trafficking and associated crimes; besides, it is forbidden to publish announcements on employment and study of citizens outside Belarus without coordination with the Ministry of Interior and the Ministry of Education (part 5 article 16 of the Law No. 350-Z);

Belarusian Ministry of Interior is obliged to publish in the media and the Internet information on legal persons and individual entrepreneurs who have licenses to carry out employment activities. The Ministry of Interior is also supposed to publish the list of organizations recognized by the Belarusian Supreme Court as involved in human trafficking (part 3 of article 16 of the Law No. 350-Z).

<sup>28</sup> Thus, it is forbidden for persons, who earlier committed crimes against sexual integrity or sexual freedom, to occupy positions associated with pedagogic activities and instruction with regards to children, as well as to occupy other positions, professions associated with permanent work with children (par. 1.1 part 1 of article 17 of the Law No. 350-Z);

Belarusian citizens, who study in institutions of the Belarusian education system, can be delegated to other countries to study and (or) participate in the course of the academic year in sports, cultural and other mass events **only based on the written permission** of heads of organizations where these citizens study (part 2 of article 17 of the Law No. 350-Z);

Legal persons and individual entrepreneurs are obliged to submit to citizenship and migration agencies the information on citizens studying in institutions of the Belarusian education system and delegated to other countries to study and (or)

The Law No. 350-Z establishes the system of measures for protection and rehabilitation of human trafficking victims<sup>29</sup>. It includes:

1. ensuring safety of such victims and their family members within the criminal proceedings;
2. social protection and rehabilitation of victims;
3. assistance rendered by diplomatic missions and consular offices<sup>30</sup>.

It is important to mention that human trafficking victims cannot be deported. Thus, if a foreign national or stateless person is a human trafficking victim or witness in criminal proceedings related to human trafficking or crimes associated with human trafficking or assists law enforcement agencies<sup>31</sup>, expulsion or deportation of such persons is suspended until the judgment is passed (verdict is delivered) for this criminal case<sup>32</sup>.

Legal norms envisaged in article 4 of the Law No. 350-Z “Protection and Rehabilitation of Human Trafficking Victims” are aimed at ensuring security of Belarusian citizens going abroad, as well as at rehabilitation of violence victims.

The Law No. 350-Z stipulates the status of centers for protection and assistance to human trafficking victims. These centers are institutions created by international or foreign organizations<sup>33</sup>, as well as non-governmental organizations to offer temporary stay facilities for human trafficking victims, rendering them legal, psychological and other assistance, ensuring their safety and protection. Law-enforcement agencies guard these centers, in order to ensure safety of human trafficking victims<sup>34</sup>. Another normative act aimed at support of human trafficking victims is the Regulation of the Belarusian Ministry of Healthcare of 28.04.2012 No. 41<sup>35</sup> that offers a list of medical services rendered free of charge to the indicated categories of persons.

Belarusian system of protection and re-socialization of human trafficking victims has a flaw: there is no special fund for assistance to human trafficking victims. At present they get compensation as crime victims within the criminal proceedings<sup>36</sup>. Such fund could be formed on the basis of proceeds from confiscated property of human traffickers.

International and national practice of criminal investigation into activities of human traffickers demonstrates that from the moment when the crime was revealed and until the sentencing there is a need for a special mechanism for interaction of law-enforcement agencies with human trafficking victims

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participate in the course of academic year in sports, cultural and other mass events (par. 3.2 part 3 article 17 of the Law No. 350-Z).

<sup>29</sup> Chapter 4 “Protection and rehabilitation of human trafficking victims”.

<sup>30</sup> Article 18 “Measures to protect and rehabilitate human trafficking victims”.

<sup>31</sup> At the same time measures to protect and rehabilitate human trafficking victims are not applied, and the measures that are applied are to be cancelled (terminated), if the human trafficking victim interferes with preliminary investigation or court proceedings dealing with human trafficking or associated crime – part 2 of article 18 of the Law No. 350-Z.

<sup>32</sup> Par. 1 of article 22 of the Law No. 350-Z.

<sup>33</sup> Within projects of international technical assistance.

<sup>34</sup> Article 21 of the Law No. 350-Z.

<sup>35</sup> “On establishing the list of necessary medical services rendered by public healthcare organizations, including in the hospital setting, to human trafficking victims regardless of their place of permanent residence”.

<sup>36</sup> The Code of the Republic of Belarus of 16.07.1999 No. 295-Z (version of 13.07.2012), Criminal Procedural Code of the Republic of Belarus, chapter 48 “Proceeding on compensation of harm inflicted on a physical or legal person by illegal actions of the body in charge of the criminal proceedings” // National registry of legal acts of the Republic of Belarus. – 25.08.2000. – No. 77-78, 2/71.

ensuring the special status of these complainants in the criminal proceedings. At the same time Belarusian criminal legislation allows applying general measures to ensure safety of witnesses in this context<sup>37</sup>.

The institute of National Rapporteur on Human Trafficking was established, in order to improve the mechanism of international cooperation in the field of combat against human trafficking. These functions are carried out by the Belarusian Minister of Interior. The National Rapporteur interacts with other states and international organizations in Belarus, submits an annual report to the Belarusian Council of Ministers on human trafficking, evaluates efficiency of undertaken measures and offers recommendations on improvement of legislation<sup>38</sup>.

### **3.2 Liability of physical and legal persons involved in human trafficking and (or) associated offenses**

Both physical persons and organizations can be subjects of liability for human trafficking and associated offenses. Citizens can be held liable under the following articles of the Belarusian Code on Administrative Offenses: article 9.23 “Violation of procedure and terms of employment outside the Republic of Belarus by citizens of the Republic of Belarus, foreign nationals and stateless persons permanently residing in the Republic of Belarus”, article 23.65 “Illegal castings”, article 12.15 “Violation of legislation on advertising”, part 3 of article 22.16 “Violation of requirements to the use of the national segment of the Internet”, part 5 of article 12.7 “Illegal entrepreneurial activity”.

In Belarus there is property and licensing responsibility of organizations<sup>39</sup> involved in human trafficking. Thus, activities of organizations associated with human trafficking<sup>40</sup> are banned, such organizations are to be liquidated and their property is confiscated. Funds received from selling the confiscated property are used to compensate for the damage caused to human trafficking victims, as well as to finance programs of counteraction to human trafficking, support non-governmental and other organizations established for work with human trafficking victims. Operation of organizations involved in human trafficking is suspended following the decision of the Belarusian Prosecutor General and is subsequently terminated following the ruling of the Belarusian Supreme Court based on request of the Prosecutor General<sup>41</sup>. Organization recognized as involved in human trafficking is included in the corresponding list to be published in the mass media<sup>42</sup>.

Operation of foreign and international organizations involved in human trafficking can be terminated following the ruling of the Belarusian Supreme Court. This ruling results in the ban on opening of offices of such organizations in Belarus, while foreign nationals and stateless persons involved in human trafficking or associated offenses are denied registration or extension of stay and their period of temporary stay in the country can be reduced, they can also be denied permits for temporary and permanent residence in Belarus or such permits can be annulled<sup>43</sup>.

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<sup>37</sup> Chapter 8 of the Criminal Procedural Code of the Republic of Belarus “Measures to ensure safety of participants of the criminal proceedings and other persons”.

<sup>38</sup> Article 26 of the Law No. 350-Z.

<sup>39</sup> Including foreign and international ones.

<sup>40</sup> In case of their registration in the territory of Belarus.

<sup>41</sup> Article 29 of the Law No. 350-Z.

<sup>42</sup> Procedure of preparation and publication of the list of organizations involved in human trafficking is established by the Regulation of the Belarusian Cabinet of Ministers of 08.05.2012 No. 427 “On Procedure of Preparation and Publication of the List of Organizations Involved in Human Trafficking” // National registry of legal acts of the Republic of Belarus. – 16.05.2012. – No. 55, 5/35672.

<sup>43</sup> Article 30 of the Law No. 350.

### 3.3 Criminal norms aimed at combat against human trafficking and crimes associated with human trafficking

Belarusian legislators for a long time did not think it was necessary to introduce criminal liability for slavery and servitude. Only in 2008 article 181-1 “use of slave labor” fully corresponding to the norms of international law was introduced into the Criminal Code of Belarus. It envisages liability for the use of slave labor or other forms of human exploitation. At the same time one should note that having introduced criminal liability for the use of slave labor legislators did not interpret the notions ‘slavery’, ‘slave labor’, ‘other form of exploitation’. We presume that terminology borrowed from international legal acts ought to be explained in the national law. Besides, due to flaws in the legal structure of the norm envisaged in article 181-1 of the Criminal Code no single person was convicted from the moment this article was enacted.

Other provisions of international norms aimed at combatting slavery and human trafficking were also introduced into the Belarusian criminal legislation. Thus, the following Criminal Code articles are devoted to combat against crimes associated with slavery: article 181 “Human trafficking”<sup>44</sup>, article 182 “Abduction of a person”, article 183 “Illegal imprisonment”, article 291 “Hostage taking”.

Belarusian legislation guarantees unavoidability of criminal liability for human trafficking, stipulating it in par. 2 of article 27 of the Law No. 350-Z. It states that unwillingness or inability of the human trafficking victim to change his or her antisocial behavior caused by human trafficking or associated crime does not exclude liability of persons who committed human trafficking or associated crimes and cannot be regarded as a mitigating circumstance.

The main provisions of international legal acts protecting children from sexual exploitation found reflection in the Belarusian Criminal Code that envisages criminal liability for rape of an a fortiori underage person or minor (part 2, 3 of article 166 of the Criminal Code); violent actions of sexual nature committed with regards to an a fortiori underage person or minor (part 2, 3 of article 167 of the Criminal Code); sexual intercourse and other actions of sexual nature with a person who has not yet reached the age of 16 (article 168 of the Criminal Code); lewd acts (article 169 of the Criminal Code); engagement of an underage person in antisocial behavior (article 173 of the Criminal Code), engagement of an underage person in prostitution or forcing to continue prostitution (part 2 of article 171-1 of the Criminal Code); production and dissemination of pornographic materials or items of pornographic nature with an image of an underage person (article 343-1 of the Criminal Code), human trafficking involving an a fortiori underage person (par. 1 part 2 of article 181 of the Criminal Code), as well as use of slave labor of an a fortiori underage person (par. 1 part 2 of article 181-1 of the Criminal Code); there is also liability for illegal actions associated with adoption of children (article 177-1).

Legal instruments for counteraction to exploitation of prostitution by third persons are envisaged in the Criminal Code articles 171 “Use of prostitution or creation of conditions for prostitution”<sup>45</sup> and 171-1 “Engagement in prostitution or forcing to continue prostitution”<sup>46</sup>.

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<sup>44</sup> Under article 181 of the Belarusian Criminal Code, objective side of the human trafficking offense is formed by the following alternative actions: 1) purchase or sale of a person or making of other transactions with regards to this person; 2) recruitment, transportation, transfer, harbouring or receipt of a person for the purpose of exploitation. It is important that legislators recognize any transactions with regards to a person as criminal offenses regardless of the presence or absence of exploitation objective.

<sup>45</sup> Person offering sexual services for remuneration does it voluntarily (unlike in case of human trafficking (article 181 of the Criminal Code) and use of slave labor (article 181-1 of the Criminal Code).

<sup>46</sup> Responsibility for engagement in prostitution or forcing to continue prostitution, while there is no goal to further use this person for sexual exploitation (when sexual services for remuneration were offered voluntarily).



## **Conclusion**

To sum up, one should note that over the recent decade Belarus has paid special attention to the problem of human trafficking. Belarus joined key international legal acts in this field and set up an efficient system for combat against human trafficking, prevention of this category of crimes, protection of human trafficking and exploitation victims.

Following international standards, Belarusian legislators introduced liability for human trafficking and associated crimes into the Criminal Code. However at present there is still a need to improve legal norms concerning identification of crime elements in case of such crimes as “use of slave labor” and some others.



**Combatting Human Trafficking  
in the Republic of Belarus**

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## **1. The Evolution of Policies against Human Trafficking from 1991 until 2013**

The history of formation and development of the anti-human trafficking policy can be divided into two stages: (1) from 1991 until 1999, when the fight against human trafficking was predominantly dealt with by NGOs; (2) from 2000 until the present day, when the state policy in this regard has been actively implemented with a joint effort of various actors.

In the process of looking into the state policy in the field of combatting human trafficking in the Republic of Belarus during the post-Soviet period, it is advisable to begin with the understanding that no information regarding this issue on the territory of the Republic was available until the dissolution of the USSR. Hence the criminal aspects of the problem were not perceived as socially important and were not receiving any attention on the part of legislative state bodies.

In the 1990s, no official policy on human trafficking existed. Firstly, in the conditions of a difficult economic situation in the country during the first half of the 1990s, trafficking has not existed as a separate field of work amongst the police forces.

The problem was predominantly addressed by the non-governmental organizations that have emerged with the financial assistance of the Western states. The NGOs studied this phenomenon and attempted to combat trafficking by means of information campaigns and assistance to the victims. Secondly, state organs did not have special units, which would have been assigned to fight this problem. When discovered, cases of human trafficking were prosecuted as regular criminal offences.

During the first stage, the non-governmental organizations were the main actor in the field of combatting human trafficking (first and foremost, sexual exploitation of women). State agencies also paid attention to this problem. The Ministry of Labour and Social Protection had a department that dealt, among other issues pertaining to the issues of labour, with human trafficking. The employees of this department actively cooperated with the non-governmental organizations in research and the process of elaboration of measures to combat human trafficking.

In 1995, the officials from the above mentioned department of the Ministry of Labour and Social Protection and from the Ministry of Foreign Affairs, as well as NGO activists, took part in the Fourth World Conference on Women in Peking. An Action Platform was adopted. The Platform became the basis for a number of plans and concrete measures against human trafficking in the framework of a more general fight against all types of violence against women, including sexual abuse. Belarus signed documents and resolutions of the Fourth World Conference on Women, i.e., officially joined the process of implementation of the strategic goal of the Peking platform: «Liquidation of Female Human Trafficking and the Assistance to the Female Victims of Abuse as a Result of Prostitution and Trafficking».

In the absence of special laws against human trafficking, trafficking in human beings was considered a crime related to forced exploitation of women in the sphere of sexual services, predominantly after their fraudulent export abroad. Women were regarded as victims of violence, who got in trouble as a result of their unfamiliarity with laws, trust to traffickers, direct fraud, etc. At the state level, policies combatting human trafficking were introduced in the framework of a general fight with prostitution, where women who were found employed in sex-industry were considered both victims and persons looking for an easy income. Attempts were undertaken to re-educate these women and offer them a different type of employment. The national media of Belarus actively participated in the campaign against these unlawful forms of behaviour.

The NGOs (volunteers) paid more attention to informing Belarusian women and girls about possible dangers of human trafficking and providing help to the victims of trafficking. The main topics were related to the possibilities of getting into sexual or labour slavery.

During the second stage, the state joined the main agents involved into the elaboration and execution of the anti-human trafficking policy. In 2000, a special division on anti-trafficking for the purposes of sexual and other exploitation was created within the Ministry of Internal Affairs. Analogous structures were created in the regional centres. Since then, various types of anti-trafficking laws have been adopted as well as programs combatting human trafficking and prostitution. Furthermore, various complex measures have been elaborated and implemented on the basis of this legislation.<sup>1</sup> In recent years, these measures have been tightly connected with counter-measures against irregular migration. A State Program for 2011-2013 is currently being implemented in this sphere, which involves active collaboration of various governmental and non-governmental organizations. The program pays great attention to the rehabilitation of victims of human trafficking, including the examination of case-studies, prophylactic measures, active collaboration with the international organizations in this sphere, research of various aspects of anti-trafficking policies, seminars and training sessions (jointly with the NGOs and international organizations). It also involves training national experts in this sphere.

During the second stage, in the very beginning of the 2000s, a new non-governmental program «La Strada» was launched. Within «La Strada», a 'hot line' was set up. It provided information to those in need of information or assistance regarding their travel abroad. The significant contribution of «La Strada» to the fight against human trafficking was noted in the Alternative report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women in the Republic of Belarus. Thus, the analysis of phone calls on the 'hot line', it was revealed that the potential risk group consisted primarily of women aged 21-40, who wished to travel abroad for work or marriage (Petina 2003).

## **2. Brief summary of projects dealing with the problem of human trafficking, and their results**

"Ariadne" was the first project to open a hotline in 2001. Since the end of 2001, a hotline within «La Strada» was launched. Initially, the Program existed within the NGO "Belarusian Association of Young Christian Women" (BYWCA). Currently, «La Strada» is working under the auspices of the international NGO "Gender Perspectives." The work of the hotline is managed by this organization jointly with another non-governmental organization "Business Women's Club."

The analysis of the hot line activity showed that most people, both men and women, seek information regarding employment opportunities abroad. Second most numerous group of questions concentrates on the issues related to marriages abroad. These issues are mainly of interest to women. The site of «La Strada» reported that in 2012 alone, the program helped 28 persons-victims of trafficking and their families. During the 12 years of the existence of the program under the auspices of the international NGO "Gender Initiatives", the organization assisted 317 individuals (Results 2012). The Program director Elena Nesteruck notes that her colleagues meet the victims upon their return to Belarus, help to rebuild their lives, and provide psychological, medical and legal aid. If necessary, they provide temporary shelter and offer help in finding employment. A large-scale activity is being undertaken to prevent cases of labour and sexual slavery: for instance, in 2012, 335 thematic lectures on safe migration were attended by three thousand people in different cities of Belarus (Results 2012). The program has a network of coaches to work with different target groups. It produces and distributes free information on the issue of combating human trafficking and migration.

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<sup>1</sup> On the Governmental Programme of Comprehensive Measures to Combat Human Trafficking and Prostitution, 2002-2007: resolution of the Council of Ministers as of November 8, 2001 № 1636, amended, text status June 18, 2004; the Law of the Republic of Belarus On ratification of the United Nations Convention against Transnational Organized Crime as of May 3, 2003, № 195-3; the Law of the Republic of Belarus on Action against Trafficking in Human Beings (ratified by the House of Representatives on December 14, 2011, approved by the Council of the Republic on December 20, 2011).

The website of the program is annually visited by approximately 100,000 individuals from around the world, who are interested in safe migration.

The Program has a number of partners, including the International Organization for Migration (in 2012, a joint conference "Development of a national referral mechanism to protect and assist victims of human trafficking" was organized, as well as a number of regional workshops to combat domestic violence and trafficking in human beings). In previous years, the program «La Strada» worked on a number of projects in partnership with other organizations (e.g., two projects were organized jointly with the UNDP, Belarus).

Currently, a number of projects in the anti-trafficking sphere is carried out under the auspices of the "Young Men's Christian Association" ("YMCA"), which is active in Belarus since 2000 and has offices in Brest, Minsk, Gomel and other cities. Other community organizations that continue to work in this field are: the Belarusian Young Women Christian Association (BYWCA) and "Children are not for violence."

Given that the Ministry of Interior is now an umbrella organization that oversees the implementation of activities that combat human trafficking in Belarus, the Ministry officials participate in joint seminars with community organizations. They also participate in the dissemination of publicity for the Info-line of «La Strada» and offer assistance to the victims of trafficking. The officials also invite public organizations to participate in the development of legislation in this area (for example, «La Strada» participated in the elaboration of the State program on combating trafficking in human beings).

In recent years, men between the ages of 18 and 45, who intend to work abroad, became a potential risk group of labour slavery. In this regard, as reported at a press conference on December 3, 2012, by a representative of the International Organization for Migration in the country and the head of the international technical assistance project «Combating Trafficking in Persons: Belarus» Natalia Jacques, Belarus launched a new information campaign to counter labour exploitation, particularly in Russia (BelaPAN 2012a). Cases of labour slavery of men in Russia were reported in the local media as well (Spasyuk 2013), pointing to the need of a special law against trafficking in persons in the CIS (CIS 2013).

According to the statistics of «La Strada», in 2012, 70% of victims to trafficking were exploited in the Russian Federation. The average age of victims was 23 years. At the time of recruitment, all victims were in a difficult financial situation. All victims of human trafficking cooperated with law enforcement authorities (Belarusians ... 2012).

As the Foreign Ministry spokesman Andrei Savinykh reported on December 6, 2012 at a briefing in Minsk, Belarus attaches great importance to the implementation of the United Nations Global Action Plan on Combating Trafficking in Persons and Anti-Trafficking (BelaPAN 2012b).

In 2013, Belarus starts to implement the new international technical assistance project on the subject of "human rights in the context of combating trafficking in human beings" that was launched by the United Nations Office of the High Commissioner. The problem remains relevant for Belarus. Thus, the Ministry of Interior News reported that in 2012, the detectives in the capital city of Belarus managed to prevent the trafficking of another batch of Belarusian prostitutes to Germany, organized by a German and a Belarusian (upon consent of the women, which does not cancel the illegality of this type of business in Belarus) (Boyarovich 2013).

Due to its geopolitical position, Belarus remains an area of risk of growth of human trafficking as both a sending and a transit country for international trafficking. Therefore, international law enforcement cooperation should be developed in this field, information campaigns regarding the overseas employment should be launched, and programs to support the victims of trafficking should be maintained and supported.

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**Human Trafficking  
in Moldova**

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## Introduction

Since Moldova declared its independence in 1992 and people gained the right to travel freely abroad, illegal migration and human trafficking became an important problem for the Government and its international partners.

After the war against Russia, in Transnistria (1992) the Government lost control over the most industrialized part of the country and almost all the eastern border. Constant fights between pro-western and pro-russian parties, corruption created an environment where officials could use their positions to make fortunes by protecting organized crime.

Poverty and lack of employment opportunities in Moldova made people desperately search for solutions in other countries.

In this environment, many desperate people became victims of criminals (often protected by officials) who made fortunes by selling other humans for sex, begging, labour.

Unfortunately in the early years of independence there was no much interest in studying and fighting the phenomena of human trafficking. Only by the end of 90's, when the issue of fighting human trafficking became one of the most important conditions for receiving assistance from international partners, the Government started to take actions to better understand and fight the phenomena.

In 2004 in the US embassy report<sup>1</sup> on human trafficking Moldova was described as “primarily a source country for women and children trafficked for the purpose of sexual exploitation to the Balkans; other European countries; and the Middle East”. The report was also saying that trafficking from and through Moldova to Russia, Turkey, the U.A.E. Israel continued unabated. Moldovan men and children were trafficked to Russia and neighboring countries for forced labor and begging.

According to the report, Moldova was also a transit country for victims trafficked from Ukraine to Romania. The border region of Transnistria, not under the central government's control, served as a source and transit point for trafficking victims.

According to US officials, although the Government of Moldova was making significant efforts to fight trafficking, it didn't fully comply with minimum standards for the elimination of trafficking.

### 1. Understanding the phenomena

Protection of victims and prevention of human trafficking was mostly supported by NGOs and international organizations funded by foreign donors. One of such NGOs, with a prominent activity in Moldova is the International Center "La Strada", which started its activity in 2001<sup>2</sup>.

Among many services, La Strada, offers assistance to victims of human trafficking. During this process a standard set of data is collected on each victim. These data offer the possibility to understand better the phenomena.

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<sup>1</sup> <http://moldova.usembassy.gov/reports-on-moldova.html>

<sup>2</sup> <http://www.lastrada.md>

## 1.1. The victims

From 2001 to 2012 La Strada's hot-line operators received 33315 calls concerning the Center's services. Of them, 5922 (18%) were calls from victims of human trafficking seeking help (1986 calls) and calls from people searching for missing persons considered as trafficked (3936 calls).

According to the La Strada reports<sup>3</sup>, it seems that human trafficking is almost totally driven by the demand of sex slaves as most victims are women (more than 90%) under 25 years (about 80%) from villages (48%) and small towns (22%). Children<sup>4</sup> make about 14% of victims, and this share increased over time (from 10% in 1999-2004 to 20% in 2005-2009). Almost 80% of trafficked children were sexually exploited, 15% were forced to work and 5% forced to beg.

Single persons are more exposed to risks of being trafficked (75% of La Strada assisted victims). Risks increase if the person is an orphan or lives with only one parent. Among persons who live in complete<sup>5</sup> families, those who are abused by family members face a three times higher risk of being trafficked, than those who are not.

Level of education is also linked to risks of being trafficked. Most of victims (92%) at most studied 9 years in school, 5% had vocational education and 4% higher. This relation is most probably the result of the fact that 86% of victims, before being trafficked, were living in extreme poverty, doing unskilled work.

Only 9% of trafficked persons knew exactly what will be they doing, which is prostitution. The rest of victims had no idea.

## 1.2. How trafficking works

Recruitment usually takes place in Chisinau (48%) or the village/town where the victim lives (37%), through false job offers (79%). Recruiters are both strangers and non-strangers. Still, during 2005-2010, compared to 1999-2004 the share of non-strangers among recruiters increased to 73%, from 48%. Data indicate that the share of women among recruiters is increasing. Also increased the share of recruiters-foreigners: from 10% to 30%.

Only 8% of victims declared that they were kidnapped and trafficked.

Now, victims cross the border mostly legally (85%), by plane or train and mostly individually, unattended. In the 1999-2004 period only 65% of victims were crossing the border legally and traveling in groups, supervised was practiced more often.

In recent years, most victims were trafficked in Turkey (29%) and Russia (28%). Compared to the 1999-2004 period, it could be said that an important shift from west (Macedonia, Yugoslavia) to east happened.

As noted earlier, human trafficking in Moldova is mainly driven mainly by sex slavery, still there's an evidence of an increasing share of trafficking for forced labour.

On average, the duration of exploitation decreased from 2 years in 1999-2000, to 5 months in 2003-2004 and 3 months in 2005-2010.

Significant changes happened regarding methods of control of victims. Over time traffickers improved their methods preferring psychological manipulation over crude force. Traffickers try to

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<sup>3</sup> <http://www.lastrada.md/publicatii/en.html>

<sup>4</sup> Persons aged 0-17 years.

<sup>5</sup> Both parents present

make victims think that they need them, that only they can take care of them. They offer their victims rewards for good behavior and promises of big moneys after they will pay the debts.

## 2. Prosecution

Over time, facing the need to fight dangerously growing phenomena, several actions were undertaken to spot and punish traffickers.

The criminal law was revised, anti-trafficking courses were instituted at the police academy, Police and prosecutors received anti-trafficking investigations trainings.

Over the years the number of opened trafficking investigations varied a lot. What is important is that if in the 2003-2008 period on average 15% of investigations ended by a conviction, then in 2010 and 2011 this rate increased to 30%<sup>6</sup>.

It was widely suspected that the Anti-Trafficking Unit limited the number of cases it investigated due in some instances to pressure from complicit officials at higher levels in the government. In 2005, the Anti-Trafficking Unit was dissolved and a Center for Fighting Human Trafficking was set. A couple of policemen were convicted for cooperation with traffickers.

Besides policemen, several judges were investigated under charge of helping traffickers avoiding prison, but none was convicted.

In 2009 an investigation initiated in 2006, against governmental officials protecting a well-known sex trafficker was reopened, but no one was convicted.

## 3. Protection

Many years the Government did not undertake active actions to help victims of trafficking and make them cooperate in order to help punish traffickers. Although several changes were made to the law, no concrete steps were made, although there were concrete engagements.

Only starting with 2006 the Government started to cooperate more actively with NGOs and international organizations, according to its engagements.

## 4. Prevention

In order to coordinate all anti-trafficking actions a National Committee on Trafficking in Persons and an Action Plan were set. Although the Committee met twice a month on a regular basis it produced limited results due to the lack of a full-time secretariat and a clear mandate.

With support from NGOs and international organizations, in 2005 the Committee proposed to the Parliament a new law to comprehensively address all aspects of trafficking.

Still most of prevention work was being done by NGOs. Government's efforts were limited to interviews, attending trainings organized by International Organization for Migration and NGOs.

Only starting with 2009 the Government involved more responsibly in prevention activities. A national network of 34 multidisciplinary regional commissions was set. Members of commissions (NGOs, officials, local activists, priests, etc.) meet monthly, planning activities meant to reduce risks of trafficking.

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<sup>6</sup> Own calculations based on data from the US embassy reports

The Government gave possibility to NGOs to more actively participate in the process of investigation of trafficking cases.

## **5. Human trafficking in present**

Although in the recent years the Government involved more in combating human trafficking, it does not comply fully with minimum standards for the elimination of trafficking.

The 2012 US embassy report recommends that in order to efficiently fight human trafficking Moldova has to make important efforts to investigate, prosecute, and convict government officials evolved in trafficking, and seek criminal prosecution and conviction of any guilty officials. Also, it is crucial that convicted trafficking offenders serve time in prison, not only pay fines.

Complicity in human trafficking of governmental officials is still a concern. No government official was convicted for trafficking-related complicity in 2011. The government is currently prosecuting two high-level government officials for trafficking-related complicity.

Corruption in high-level officials and judges is seen as the main, structural problem, which prevents efficiently fighting traffickers. Even if convicted, less than a half of traffickers go to prison. Usually they pay a fine and return to crimes.

**Legal Aspects of Combating  
Human Trafficking in Moldova**

**TATIANA CIUMAS**

*Legal Module*





## 1. International framework

12 March 2012 Moldova ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote, 25 October 2007).<sup>1</sup> The Convention entered into force 1 July 2012. The Republic of Moldova made two declarations upon ratification: first, that until the full re-establishment of its territorial integrity, the provisions of the Convention will be applied only to the territory controlled effectively by authorities of the Republic of Moldova; second, in accordance with Article 37, paragraph 2, of the Convention, the Moldovan Ministry of Interior was designated as the national authority for recording and storing national data on convicted sexual offenders.

Moldova ratified the United Nations Convention against Transnational Organized Crime.<sup>2</sup> Until the full establishment of the territorial integrity of the Republic of Moldova, the provisions of the Convention will be applied only on the territory controlled by the authorities of the Republic of Moldova.

Additionally Moldova ratified the Palermo Protocols, namely:

- The Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime<sup>3</sup>
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime<sup>4</sup>
- The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime<sup>5</sup>

According to the declaration made by Moldova, until the full establishment of the territorial integrity of the Republic of Moldova, the provisions of the Protocols will be applied only on the territory controlled by the Moldovan authorities. The same declaration was made to the Council of Europe Convention on Action against Trafficking in Human Beings which was ratified in 2006<sup>6</sup> and entered into force in 2008. Also Moldova acceded to the Convention on the Elimination of All Forms of Discrimination against Women<sup>7</sup> and Convention on the Rights of the Child.<sup>8</sup>

In 2011 Moldova approved the Agreement regarding collaboration between ministries of internal affairs (police) of the CIS countries in fight against trafficking in human beings. This was signed at Sankt Petersburg, 17 September 2010.<sup>9</sup>

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<sup>1</sup> Law no. 263 of 19 December 2011, published in Monitorul Oficial no. 21-24 of 27 January 2012.

<sup>2</sup> Law no. 15 of 17 February 2005 published in Monitorul Oficial no. 36-38 of 4 March 2005

<sup>3</sup> Law no. 16 of 17 February 2005 published in Monitorul Oficial no. 36-38 of 4 March 2005

<sup>4</sup> Law no. 17 of 17 February 2005 published in Monitorul Oficial no. 36-38 of 4 March 2005

<sup>5</sup> Law no. 224 of 13 October 2005 published in Monitorul Oficial no. 145-147 of 4 November 2005

<sup>6</sup> Law no. 67 of 30 March 2006, published in Monitorul Oficial no. 66-69 of 28 April 2006

<sup>7</sup> Parliament Decision no. 87 of 28 April 1994 published in Monitorul Oficial no. 5 of 30 May 1994

<sup>8</sup> Parliament Decision no. 408 of 12 December 1990 published in Monitorul Oficial no. 12 of 13 December 1990

<sup>9</sup> Government Decision no. 327 of 4 May 2011, published in Monitorul Oficial no. 78-81 of 13 May 2011

## 2. National Legal Framework

Law no. 241 of 20 October 2005 on prevention and combating trafficking in human beings partially transposed Council of Europe Convention on action against trafficking in human beings of 3 May 2005. It also transposed the UN Convention against transnational organized crimes of 15 November 2000 and EU acquis. The Law regulates the aspects relating to the prevention and combating of trafficking in human beings, assistance framework with its protection of victims, collaboration and cooperation at national and international level, and the involvement of civil society. Article 4 sets the principles which govern the process of combating the trafficking in human beings. This also includes free access to justice, security of victims including fair attitudes and social partnership.

The Law defines, in Article 2, trafficking in human beings as recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat of force or the use of force or other forms of coercion, of abduction, fraud, deception, of abuse of power, or of a situations of vulnerability, or means of offering or receiving payments or benefits of any kind in order to obtain the consent of a person who has control over another person for the purpose of exploitation of the latter. The Law distinguishes between trafficking in human beings, trafficking in children and the exploitation of a person. Under Moldavian legislation a child is considered a person under 18 years of age.

The same definition of trafficking in human beings can be identified in the Criminal Code of the Republic of Moldova.

### 2.1 Institutional framework

For the coordination of activities for preventing and combating trafficking in human beings and cooperation between state bodies and civil society in Moldova the following institutions were created: the National Committee as a consultative body of the Government (Article 8 para. (2) of the Law on prevention and combating trafficking in human beings); and territorial commissions for combating trafficking in human beings (Article 9 of the Law). The national Committee includes representatives of the public authorities, as well as law enforcement bodies and other organizations that perform activities for preventing and combating trafficking in human beings. Through the Government Decision no. 472 of 26 March 2008 the Regulation of the National Committee for fighting against trafficking in human beings was approved.<sup>10</sup>

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<sup>10</sup> Published in Monitorul Oficial no. 69-71 of 4 April 2008. According to Point 5 of the Regulation the National Committee has the following functions:

- coordinates activities for the prevention and combating trafficking in human beings, as well as cooperation with public authorities, international organizations and NGOs, other agencies and representatives of the civil society;
- submits proposals to the Government on the principles of state policy in the field of preventing and combating trafficking in human beings and recommendations aimed at improving the detection and clearance activity of causes and conditions that contribute to human trafficking and carrying out human trafficking;
- monitors the implementation of the actions set out in the National Plan for Preventing and Combating Trafficking in Human Beings and the provisions of legislation on preventing and combating trafficking in human beings by state organizations and institutions;
- collects and analyzes information about the size, status and trends of human trafficking at national level;
- drafts proposals to improve legislation on preventing and combating trafficking in human beings and protection of victims of trafficking;
- organizes campaigns for the population on issues related to human trafficking and social danger of this phenomenon;
- coordinates the activity of territorial commissions and specialized agencies regarding the implementation of the national plan of actions as well as other actions to prevent and combat human trafficking;
- assesses and monitors periodically the implementation of the National Plan and bring results to the attention of the Government and civil society.

Based on the Government Decision no. 234, 29 February 2008<sup>11</sup> was approved as the standard format of the territorial commissions' Regulation. The commissions were created under the executive body of the local public authorities, being subordinated in their activity to the National Committee. The decisions of the National Committee are binding for territorial commission (Point 25) and twice a year (10 January and 10 July) the territorial commission submits activity reports to the Committee. According to Point 10 of the Regulation, the territorial commission is a consultative body. It is responsible for strengthening the efforts of the responsible bodies in combating human trafficking as well as establishing of goals and coordinated measures with a view to preventing and combating human trafficking.

The law on the prevention and on combating trafficking in human beings expressly provides for the functions of each public authority and emphasizes the cooperation and involvement of civil society and the local authorities. The Law refers to trafficking in human beings as a general concept, Article 6 para. (1) emphasizes the prevention and combating activities relating to trafficking in women and children, which needs to be undertaken by authorities and civil society.

Based on Article 7 of the Law on human trafficking<sup>12</sup>, the National Plan for the prevention and combating trafficking in human beings for the years (2012-2013) was approved 31 July 2012.<sup>13</sup> The Plan provides for the implementation of concrete measures and the achievement of social-economic initiatives directed towards the prevention and combating of trafficking in human beings, the protection of victims and collaboration.

With a view to preventing and combating trafficking in human beings the legislation in force expressly sets the responsibility for the state to professionally prepare and train representatives of law enforcement bodies, migration bodies and other relevant authorities.

## 2.2 Protection

In the legislation of the Republic of Moldova on human trafficking several stages of the protection process can be identified:

- I. The identification of the victims in human trafficking. This is a process which involves representatives of the state bodies and civil society.
- II. The social rehabilitation of trafficking victims. This process is directed towards their reintegration and includes legal and material assistance, psychological, medical and professional rehabilitation, not to mention employment and accommodation.

Through the Government Decision no. 1362 of 29 November 2006, the Regulation-framework for the organization and functioning of the centres for the assistance and protection of victims of trafficking in human beings was approved.<sup>14</sup> According to the Regulation the Ministry of Internal Affairs is the authority in charge of the security of the centres; the Ministry of Labour, Social Protection and Family is, meanwhile, in charge of monitoring the centres' activity. According to Point 1 of the Regulation, the centre for the assistance and protection of victims of trafficking in human beings is a specialized institution that provides support services for the integration/reintegration of victims into their family and community. The beneficiaries of the centre are victims of trafficking and potential victims who are citizens of the Republic of Moldova and stateless persons who had the right to live permanently in the Republic of Moldova at the moment of entrance into the territory of another state, namely women, children, parents/children, men.

<sup>11</sup> Published in Monitorul Oficial no. 47-48 of 7 March 2008

<sup>12</sup> The Law sets that the Government approves these kinds of plans every 2 years.

<sup>13</sup> Approved through the Government Decision no. 559, published in Monitorul Oficial no. 165 of 7 August 2008

<sup>14</sup> Published in Monitorul Oficial no. 186-188 of 8 December 2006

Based on Government Decision no. 847 of 11 July 2008<sup>15</sup> a centre in Chisinau was created, being a public institution subordinated to the Ministry of Labour, Social Protection and Family. The Centre is specialized in offering: civilized accommodation and good personal hygiene conditions, food, legal, social, psychological and emergency care assistance, security and protection, as well as assistance for getting in touch with relatives.

### III. The professional integration of victims of human beings trafficking

Victims of trafficking in human beings, older than 16 years old, can benefit from vocational training; they are given priority enrollment.<sup>16</sup> This training is organized free of charge for up to nine months by the National Employment Agency and are undertaken by authorized public or private institutions. The person will attend the training if he or she: is registered at one of the territorial employment agencies; has no job/profession; and cannot be employed. Legislation in force allows a single integration or professional reintegration allowance to victims of trafficking.

### IV. Repatriation of trafficking victims

The Regulation on the repatriation procedure for children and adults – victims of trafficking in human beings, illegal trafficking of migrants, as well as of unaccompanied children, approved through the Government Decision no. 948 of 7 August 2008<sup>17</sup> – sets the repatriation procedure. This includes the question of who covers the expenses during the repatriation procedure, the identification of parties and protection in emergency cases. Regulation is applied to citizens and stateless persons who had the right to live permanently on the territory of the Republic of Moldova at the moment of entrance to the territory of another state. Repatriation is conducted on a voluntary basis, based on written agreements, and is initiated only after the competent authorities ensure that the opinion of the person regarding repatriation is taken into consideration (Point 6). Repatriation of children is done with respect to the best interests of the child principle but only if there is a durable solution. According to point 9 of the Regulation a positive decision on repatriation can be taken if a safe reunification with the family can be organized, or if a specialized institution agrees and can provide protection and proper care immediately after the arrival of the child in the Republic of Moldova.

According to Chapter IV of the Regulation, the repatriation of a child consists of several stages, namely:

- identification of the child. If the identity of the child cannot be established the protection authorities from the destination country are informed about the fact that the child cannot be included under a category provided for by the Regulation and thus the Moldovan authorities cannot further assume responsibility for repatriation of this child;
- documentation;
- identification of the family or legal representative;
- obtaining repatriation approval;
- *de facto* repatriation. The Ministry of Labour, Social Protection and Family is the responsible body for organizing repatriation after consent is given by the authority from the country of destination. But Regulation allows the authorities from the destination country to perform repatriation procedure as well (Point 44);
- rehabilitation, monitoring and reporting.

As for the repatriation procedure of adults it consists in

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<sup>15</sup> Published in Monitorul Oficial no. 127-130 of 18 July 2008

<sup>16</sup> Law no. 102 of 13 March 2003 on employment and social protection of persons who are looking for a job, published in Monitorul Oficial no. 70-72 of 15 April 2003

<sup>17</sup> Published in Monitorul Oficial no. 152-153 of 12 August 2008

- identification;
- documentation;
- *de facto* repatriation;
- placement under protection;
- rehabilitation, monitoring and reporting.

Within the repatriation procedure and after repatriation the Ministry of Labour, Social Protection and Family jointly with the Ministry of Internal Affairs evaluate the risks and security of the person, who is going to be repatriated, including his/her family. This includes assessment of the likelihood of stigmatization/harassment from the society or family; threat, repression or constraint of the child or his/her family from traffickers or their accomplices; and re-trafficking.

## 2.3 Documentation

If foreigners are victims of human trafficking they are accommodated in specialized centers for assistance and the protection of victims. Likewise, if they participate in criminal proceedings against the trafficker, regardless of their location in these centers, they will be granted a temporary residence permit, issued free of charge, which can be extended if necessary (Article 24 para. (6) of the Law on trafficking in human beings).

The Law on the regime of foreigners was amended in December 2012 being introduced granting an extension of temporary residence rights for victims of trafficking i (Article 42<sup>1</sup>).

The temporary residence right for trafficking victims may be granted and/or extended to a foreigner who is or was a victim of trafficking, including the case when he/she illegally entered the country, if the following conditions are met:

- a) the foreigner shows a clear willingness to cooperate with the competent authorities in the identification and prosecution of criminal offence participants whose victim is;
- b) the foreigner broke all relations with those suspected offenders, whose victim he or she is;
- c) the foreigner's stay in the country is necessary for the purposes of criminal proceedings;
- d) the foreigner does not present a threat to national security and/or public order.

The right may be granted for six months with the possibility of extending for another six months if the aforementioned conditions are fulfilled. The legislation allows the authorities to revoke the residence right in the following situations:

- the victim resumed at her/his own initiative and actively maintains contact with persons suspected of committing this crime;
- the competent authorities consider the victim's cooperation to be fraudulent or their complaint as fraudulent or unfounded;
- the foreigner's stay in the territory undermines national security and / or public order;
- the victim has ceased to cooperate in criminal proceedings;
- a situation takes place, which prevents starting or performing criminal proceedings.<sup>18</sup>

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<sup>18</sup> Article 275 of the Criminal Procedure Code enumerates the situations, namely:

- there is no fact of the offense;
- the act is not an offense under criminal law;
- the act does not contain the elements of the offense, unless the offense was committed by a legal person;
- the period of limitation or amnesty intervened;
- the death of the perpetrator took place;
- missing complaint of the victim in cases when it is needed;

The temporary residence right and the residence permit are issued free of charge (Article 421 para. (5)) by the Bureau of Migration and Asylum.

Foreigners who are or were victims of trafficking in human beings may be granted tolerated stay on the territory of the Republic of Moldova during the reflection period. The tolerated stay is a permission to remain on the territory, granted by the Bureau of Migration and Asylum to foreigners who do not have the right of residence and who, for objective reasons, cannot leave the territory of the Republic of Moldova (Article 67 para. (1) of the Law on the regime of foreigners). The reflection period according to the Law on prevention and combating trafficking in human beings is 30 days and is granted to the victim for: recovering; avoidance of traffickers' influence; and/or taking a decision over cooperation with law enforcement bodies.

## 2.4 Liability

The law on the prevention and combating of trafficking in human beings provides that persons who participate in the organization and conduct trafficking in human beings activities are criminally liable under the Criminal Code of the Republic of Moldova. These types of crimes might have a national as well as a transnational character and thus both international and national legal provisions will be applied.

Criminal Code of the Republic of Moldova of 18 April 2002<sup>19</sup> sets the following actions as crimes: trafficking in human beings (Article 165); slavery and conditions similar to slavery (Article 167); forced labour (Article 168); perverse actions (Article 175); approaching children for sexual purposes (Article 175<sup>1</sup>); trafficking in children (Article 206); illegally taking out of children from the country (Article 207); attracting minors in criminal activity or their determination to commit immoral acts (Article 208); child pornography (Article 208<sup>1</sup>); use of child prostitution (Article 208<sup>2</sup>); pimping (Article 220); and the organization of illegal migration (Article 362<sup>1</sup>).

Foreigners involved in trafficking in human beings are refused entry to the territory of the Republic of Moldova or their visas will be cancelled.

In cases where victims of trafficking in human beings are involved, the provisions of the Law no. 105 of 16 May 2008 on the protection of witnesses and other participants at the penal process are applied.<sup>20</sup> The Law regulates the process of ensuring the security of the participants in the penal process. This is particularly so when their life, physical integrity, freedom or property are threatened due to the fact that they hold data which they have agreed to provide to judicial bodies with conclusive proofs regarding the commission of serious, particularly serious or exceptionally serious crimes (Article 1).

The protected person under this Law is the one who concluded a protection agreement and has one of the statuses established in Article 2 para. (1). The protection agreement is the written confidential agreement between the protected person and the authorized body for witnesses protection. It regards the measures which should be applied with a view to protecting the person, and the responsibilities of the parties and circumstances when the protection ceases. Chapter III of the Law regulates the status of the protected person, providing for rights in Article 11 and duties in Article 12. The person has the right to request protection in case there are reasonable grounds for considering that he/she or family members are or could be threatened with death, with violence, with damage or destruction of goods or with other illegal acts. Also the person has the right to request a specific protection measure or to refuse a protection measure due to moral and religious beliefs or ethical norms. The protection of the person is directly related to data protection. According to Article 15 para. (1) identity data protection of the person is ensured by withholding relevant information.

(Contd.) \_\_\_\_\_

- in respect of a person there is a final judgment in connection with the same charge or where the impossibility of prosecution on the same grounds was set;
- in respect of a person there is a valid decision to not initiate criminal proceedings on the same charges;
- other circumstances which exclude criminal proceedings.

<sup>19</sup> Published in Monitorul Oficial no. 72-74 of 14 April 2009

<sup>20</sup> Published in Monitorul Oficial no. 112-114 of 27 June 2008

**Preventing Human Trafficking:  
the Republic of Moldova**

**VALERIU MOSNEAGA**

*Socio-Political Module*





The integration of the Republic of Moldova into international migration processes was accompanied by the development of human trafficking. Moldova, moreover, witnessed multiple forms of trafficking: for the purposes of labour exploitation, for sexual exploitation, trafficking of women and children for exploitation (for begging), and trafficking of human organs for sale.

### **Principal trends and the scope of trafficking**

The chief shaping factor regarding trafficking in the Republic of Moldova was imposed by the difficult financial situation in the country and the deterioration of living standards. Human trafficking for forced labour, sexual or criminal exploitation developed in a situation, when the desire to go to work abroad in search of an adequate subsistence salary was hampered by the complexities of obtaining a visa. These processes exploded in number during the second half of the 1990s.

The main species of trafficking in this period was trafficking for labour exploitation. It developed in two directions: towards Western Europe (the European Union) and towards Russia. Trafficking of young women for the purpose of sexual exploitation was principally oriented towards the Balkan countries: Albania and the states that appeared upon the collapse of the Yugoslavia. The permeability of the borders between the newly emerged states, the consequences of the 1990s Yugoslav wars, the weakness in the post-Yugoslav governments, a poorly developed system of crime and trafficking prevention, the power of criminal groups and war commanders, the presence of multiple national and international military forces - all this contributed to the creation of an environment favourable to the growing demand for sexual services and, in consequence, to the flourishing of human trafficking for sexual exploitation.

Since the early 2000s, the primary significance of these directions declines due to the consolidation of new states in the Balkans and reinforced capacities for the fight against this form of modern slavery at both national and international levels. The reorientation of human trafficking towards the Middle East countries, Turkey, Russia and Western Europe takes place at this period.<sup>1</sup>

As for the trends concerned, it should be noted that the inclusion of the Republic of Moldova into the process of international trafficking led to the complication in the forms of human trafficking and the diversification of its destinations.<sup>2</sup> A new trend appeared: the sexual abuse of children (of 3 year old and older) by relatives and foreigners who came to Moldova for this purpose. Foreign citizens use the Internet sex tourism services when searching for their victims.<sup>3</sup>

Remaining the main focus of human trafficking, at the beginning of the third millennium sexual exploitation started to assume some new guises. In addition to the international trafficking for sexual exploitation outside Moldova, the share of domestic Moldovan 'market' is increasing. This is due to the fact that internal trafficking is less dangerous for the 'dealers' because there is no need to take risks of crossing the state borders, to obtain or prepare documents, visas, or to bribe representatives of government agencies, etc.<sup>4</sup> Because of this, commercial sex tourism is developing, with Turkey being the principal country, whose citizens come to Moldova in order to get sexual services for pay.

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<sup>1</sup> Mosneaga V. The Republic of Moldova: the trafficking of 'human beings' and the measures for its prevention. In: Labour migration and the protection of the rights of 'gastarbeiters': the practice of the post-communist countries. [Мошняга В. Республика Молдова: трафик «живых существ» и меры противодействия. // Трудовая миграция и защита прав гастарбайтеров: практика посткоммунистических стран], Chisinau, 2003, p.136.

<sup>2</sup> Trafficking in Persons Report 2012, <http://www.state.gov/documents/organization/192587.pdf> (accessed 9 February 2013).

<sup>3</sup> Trafficking in Persons Report 2012, <http://www.state.gov/documents/organization/192587.pdf>, (accessed 9 February 2013), 2011. National Report on preventing and combating trafficking in human beings for 2011 [Raport național în domeniul prevenirii și combaterii traficului de ființe umane pentru anul 2011]. Chișinău, 2012, p.13.

<sup>4</sup> Pop A. Moldova – Romania: Managing migration and combating trafficking in human beings at the EU Eastern border. Chișinău, IOM, 2007.

It is difficult to estimate the actual scope of human trafficking in Moldova. The organizers of trafficking are well aware of the criminal and immoral nature of their actions. For this reason, they are not inclined to publicize the actual scope of their activities. Most often one needs to follow expert estimates, i.e. data on the number of anti-trafficking measures.

The U.S. Department of State operates the following data on Moldova. The report for 2008 states that “no less than 1% of approximately 750,000 Moldovan labour migrants are victims of human trafficking.”<sup>5</sup> The report for 2009 also noted that “according to the ILO and the National Bureau of Statistics of the Republic of Moldova, over 25 thousand people fell victims of trafficking for labour exploitation in 2008.”<sup>6</sup>

Indirect data on the number of people involved into human trafficking are provided by the statistics on trafficking victims who received various kinds of assistance, including that in repatriation. The International Organization for Migration, dedicated to protecting victims of trafficking, cites the following data on the number of trafficking victims in the Republic of Moldova. For the period 2000-2010, the IOM provided assistance to 2,741 victims of human trafficking. Among these: 2,623 females and 118 males. 2,498 are adults and 243 children. 2,498 people fell victims to international trafficking, and 119 fell victims to domestic trafficking (Moldova). By the type of exploitation, the victims are divided as follows: sexual exploitation - 2,274 people; human labour exploitation - 243; begging – 89; removal of organs - 9; combined type - 68 persons, and not identified - 58.<sup>7</sup>

One can reasonably assume that these data are incomplete. The actual numbers are likely to be higher, since an allowance should be made for the activities of governmental agencies and non-governmental organizations active in this field, which are not included into the IOM statistics.

## Human trafficking prevention institutions

A working group on trafficking prevention and coordination of efforts against trafficking was organized in 1999. In 2000, a department for trafficking prevention was created within the Ministry of the Interior. In 2005, this department was disbanded, and the Centre for Human Trafficking prevention was established.

By the decision of the Government of the Republic of Moldova (№ 1136 of 26 May 2000), the National Working Group on Human Trafficking Prevention was established. In October 2001, the Group adopted the National Plan of Actions. Since 2004, the National Committee for Trafficking Prevention is in operation. It consists of 4 teams. The Committee develops national action plans for human trafficking prevention, as well as manages and coordinates government agencies in their activities in the field of human trafficking prevention. The committee's activities repeatedly aroused criticism on behalf of international organizations (the issues of organization and efficiency).<sup>8</sup> Since 2010, the work of the Committee became systematic, rapid and efficient. This is due to two reasons: the change of country's leadership attitudes to the problem, and the growth of the organizational and financial resources of the Committee. In order to strengthen the coordination and the process of evaluation of the policies related to prevention of human trafficking, the Permanent Secretariat of the National Committee for Trafficking prevention was established in the Republic of Moldova (according

<sup>5</sup>Trafficking in Persons Report 2008, <http://www.state.gov/j/tip/rls/tiprpt/2008/index.htm> (accessed 9 February 2013).

<sup>6</sup>Trafficking in Persons Report 2009, <http://www.state.gov/j/tip/rls/tiprpt/2009/index.htm> (accessed 9 February 2013).

<sup>7</sup>Kontula A., Saaristo E. Countering trafficking in Moldova. Chişinău, IOM, 2009, p.15; Beneficiaries assisted by IOM Moldova, 2000-2010. Chişinău, 2011 ([www.iom.md](http://www.iom.md), accessed 10 February 2013).

<sup>8</sup>Trafficking in Persons Report 2006, <http://www.state.gov/j/tip/rls/tiprpt/2006/index.htm> (accessed 9 February 2013); Trafficking in Persons Report 2008, <http://www.state.gov/j/tip/rls/tiprpt/2008/index.htm> (accessed 9 February 2013); Trafficking in Persons Report 2009, <http://www.state.gov/j/tip/rls/tiprpt/2009/index.htm> (accessed 9 February 2013).

to government's decree № 900 of 2 December 2011 on modifying and amending the Government's decree № 472 of 26 March 2008).<sup>9</sup>

Since 2007, the Republic of Moldova launched the National Reference System, which gradually spread all over the country (since 2012). Through the management of a National Reference System, the state significantly enhanced its efforts in informing the public. At the local level, trafficking prevention measures are carried out by 34 regional inter-disciplinary commissions, which include representatives of non-governmental organizations, the police and the public prosecution office, social and health workers, as well as representatives of local authorities. Since 2009, this work has become more palpable and efficient.<sup>10</sup>

## Legislative and normative-regulatory framework

Back in 2001, legislation that would counteract human trafficking was absent. Therefore, at first, the offenses related to trafficking were classified on the basis of the Article 105 of the Criminal Code "Trading in Prostitution" (1998). In 2002, a new Criminal Code of the Republic of Moldova was adopted (the law № 985 of April 18, 2002), where a number of articles deals with trafficking prevention: Article № 165 (human trafficking), Article № 206 (trafficking of children); Article № 207 (illegal transport of children outside the country), Article № 208 (1) (child pornography), Article № 220 (trading in prostitution), Article № 362 (1) (evil actions); Article № 175 (1) (seduction of children for sexual purposes).

Thereafter, several national laws and regulations governing trafficking prevention have been adopted: the law № 241 of 20 October 2005 "On Human Trafficking Prevention," the law № 105 of 16 May, 2008 "On the protection of witnesses and other participants of criminal proceedings"; the law № 1518 of 6 December 2002 "On Migration"; a governmental decree on the enactment of Regulations "On the procedure of repatriation of children and adult victims of human trafficking, illegal trafficking of migrants and children, unattended by adults" № 948 of 7 August 2008; and the National plan for Human Trafficking Prevention for 2012-2013.

In addition to legislation, one should also mention a number of documents, which set out the policy of the Moldovan state which is directly relevant to this area: the Justice Reform Strategy for 2011-2016 (enacted by the law № 231 of 25 November 2011); The National Strategy for organized crime prevention for 2011-2016 (enacted by governmental decree № 480 of 25 November 2011); the National Action Plan related to Human Rights for 2011-2014 (enacted by the decision of the Parliament № 90 of 12 May 2011), etc.

In the meantime, the Republic of Moldova is also guided in trafficking prevention by the following international agreements: the Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote, 25 October 2007), the Convention on the Elimination of All Forms of Discrimination against Women (New York City, 18 December 1979) the UN Convention on the Rights of the Child (New York, 20 November 1989); the United Nations Convention against Transnational organized Crime (New York, 15 November 2000); the Council of Europe Convention on Action against Trafficking in Human Beings (signed on 6 May 2005, Warsaw, and ratified 30 March 2006 (the Law № 67-XVI, in force since 1 February 2008 year)), the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational organized Crime (Palermo, 15 November 2000), the

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<sup>9</sup> National Report on preventing and combating trafficking in human beings for 2011. [Raport național în domeniul prevenirii și combaterii traficului de ființe umane pentru anul 2011]. Chișinău, 2012, p.15.

<sup>10</sup> Ibid, p.17.

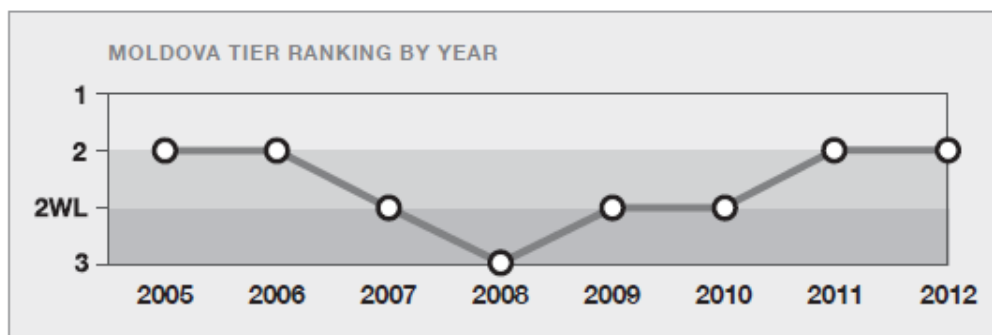
Protocol against Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational organized Crime (Palermo, November 15, 2000), etc.<sup>11</sup>

### Moldova's anti-trafficking policies

Among the principal types of anti-trafficking activities in the Republic of Moldova, one can mention the prosecution of the organizers of trafficking; the protection of trafficking victims – trafficking prevention. Since 2012, the Republic of Moldova, while demonstrating its commitment to implement international practices and standards for human trafficking prevention, builds up its activities in this field in accordance with the international principles of *4Ps* – Prosecution, Protection, Prevention & Partnership.<sup>12</sup> The Republic of Moldova conducts anti-trafficking policies relying on institutional and legal frameworks and in collaboration with civil society and international organizations.

The Moldovan authorities have made and are making certain (sometimes 'significant,' according to the experts of the U.S. Department of State) efforts, but did not fully comply with the minimum standards for the elimination of trafficking.<sup>13</sup> This assessment is characteristic of traditional approaches to characterizing Moldovan politics related to the prevention of human trafficking. Moldova's efforts did not always receive positive assessments on behalf of the international community, particularly the U.S. Department of State, which relies upon longstanding monitoring and comprehensive analysis of the situation with regard to human trafficking at global and national levels in its assessments. Thus, between 2000 and 2012 the Republic of Moldova was assessed as follows: level 2 (2000-2006); level 2WL (2007); level 3 (2008), level 2WL (2009-2010); and level 2 (2011-2012).

**Figure 1. The dynamics of the Moldovan human trafficking prevention policies in 2000-2012 (according to the U.S. Department of State)<sup>14</sup>**



The Republic of Moldova started the fight against human trafficking without any prior practical experience, trained personnel, relevant legislative and institutional mechanisms or organizational and financial capacities. In many ways, the impulse to confront trafficking was obtained from outside, that is, from other countries (the Netherlands, the USA) and international organizations (IOM). First,

<sup>11</sup> National Report on preventing and combating trafficking in human beings for 2011. [Raport național în domeniul prevenirii și combaterii traficului de ființe umane pentru anul 2011]. Chișinău, 2012, p.6.

<sup>12</sup> Ibid, p.13.

<sup>13</sup> In this context the 'minimum standards' are understood as defined by the experts of the US Department of State of, which compiles annual reports on human trafficking to assess the efforts of nation-states to prevent human trafficking. For details, see 'The Trafficking Victims Protection Act, Division A of Public Law 106-386, <http://www.state.gov/j/tip/rls/tiprpt/2002/10653.htm> (accessed 9 April 2013).

<sup>14</sup> Trafficking in Persons Report 2012, <http://www.state.gov/documents/organization/192587.pdf> (accessed 9 February 2013).

Moldovan anti-trafficking policy was largely reactive (2000-2007). It was conditioned by the influence of external factors, the monitoring carried out by the U.S. Department of State, as well as the pressure from the IOM and non-governmental organizations («La Strada», etc.). Since 2008, the state policy has been changing its character and becoming more pro-active. This development became particularly evident in 2009-2012.

### Criminal prosecution

First, criminal prosecution and punishment of the organizers of trafficking is getting systematic. Thus, in the period between 2000 and 2012, over 2,700 crimes were registered according to four articles of the Criminal Code of the Republic of Moldova dealing with human trafficking. For some of these crimes, criminal cases were initiated (exact statistics are not available).<sup>15</sup> Table 1 shows the dynamics of criminal prosecution for human trafficking according to the Articles 165 and 206 of the Criminal Code of the Republic of Moldova.

**Table 1. The dynamics of human trafficking and trafficking of children (2006-2011), Articles 165 and 206 of the Criminal Code<sup>16</sup>**

Year	Crimes registered	Directed to courts	Found guilty (persons)	Convicted to prison confinement
2006	243/61	141/52	62/7	67
2007	251/47	150/26	52/7	51
2008	215/31	96/12	63/5	58
2009	185/21	102/11	64/4	43
2010	140/21	45/10	48/5	31
2011	111/24	45/14	18/2	7/1

Second, crimes related to trafficking in human beings are regarded amongst the most serious criminal offenses. They are punishable by imprisonment from 7 years, including imprisonment for life.<sup>17</sup> In May 2009, amendments were made to the Criminal Code in connection with the harmonization of the legislation of the Republic of Moldova with that of the European Union. As follows, the terms for these criminal offenses were reduced (from 5 to 20 years).<sup>18</sup>

Third, the quality of statistical data on criminal prosecution is improving, although “concerns exist as to the objectivity of this information.”<sup>19</sup>

Fourth, one should mention also the susceptibility of the judicial system of the Republic of Moldova to corruption, which results in an increased use of conditional sentences and fines. Often, crimes related to human trafficking are described by the prosecutors as “trading in prostitution” or “forced labour.” Corrupt judges act similarly and often change the article from that on trafficking to

<sup>15</sup> Counted by the author on the basis of the U.S. State Department annual reports for 2001-2012.

<sup>16</sup> National Report on preventing and combating trafficking in human beings for 2011. [Raport național în domeniul prevenirii și combaterii traficului de ființe umane pentru anul 2011]. Chișinău, 2012, p.7.

<sup>17</sup> Trafficking in Persons Report 2007, <http://www.state.gov/j/tip/rls/tiprpt/2007/index.htm> (accessed 9 February 2013).

<sup>18</sup> Trafficking in Persons Report 2010, <http://www.state.gov/j/tip/rls/tiprpt/2010/index.htm> (accessed 9 February 2013).

<sup>19</sup> Trafficking in Persons Report 2009, <http://www.state.gov/j/tip/rls/tiprpt/2009/index.htm> (accessed 9 February 2013).

another one, the penalty for which is much less strict.<sup>20</sup> The bribing of witnesses and poor investigation are also present.<sup>21</sup> The OSCE calls attention to the facts of bribes or threats to lawyers.<sup>22</sup>

Fifth, non-governmental and international organizations and the U.S. Department of State repeatedly signalled that the number of investigations on cases of human trafficking is limited due to pressure from senior state officials involved into corruption and trafficking. They focused their attention on the fact that the Moldovan authorities consistently came out with declarations on combating human trafficking, but have not taken real actions against corrupt officials. Amongst others, the director of the Centre for Trafficking Prevention of the Ministry of the Interior of the Republic of Moldova (2006), representatives of the police and other government agencies, as well as border guards, were involved into trafficking, including providing 'protection racket' to international organizers of trafficking. The requirements to necessary reveal and to punish corrupt officials are central in the U.S. Department of State reports.<sup>23</sup> Failure to do so was one of the reasons for downgrading the Republic of Moldova in the rating of the trafficking prevention list from position № 2 to positions № 2WL (WatchList) and №3.

Sixth, training and specialized training seminars for law enforcement officers in the field of combating trafficking. Employees are trained in techniques and methods of electronic surveillance and undercover operations. Since 2003, the Police Academy of the Republic of Moldova offers courses on anti-trafficking. Coordination, exchange of experience and cooperation in combating trafficking with international organizations and special services of other states are carried out. As a result of this cooperation, new trafficking routes were disclosed (2003-2005), as well as an international criminal network (composed of a number of citizens of Italy, Norway and the Republic of Moldova) that was engaged into deceptive recruitment of teenage boys (13 to 17 years) for the purpose of sexual exploitation (prostitution and pornography). An organizer of a pornographic site of homosexual content that provided services in sex tourism to foreign citizens was identified, etc.<sup>24</sup>

## Protection of victims of trafficking

First, the Moldovan authorities recognized the importance of combating trafficking and protecting victims of trafficking. In 2007-2008, they started to assist those victims, who suffered from human trafficking crimes. The government provided a building to house the Centre for temporary detention and rehabilitation of repatriated victims of trafficking. In cooperation with the IOM, starting from 2009 it funds and maintains the Centre for psychological, social support and legal support. Previously,

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<sup>20</sup> Trafficking in Persons Report 2005, <http://www.state.gov/j/tip/rls/tiprpt/2005/index.htm> (accessed 9 February 9, 2013); Trafficking in Persons Report 2006, <http://www.state.gov/j/tip/rls/tiprpt/2006/index.htm> (accessed 9 February 2013); Trafficking in Persons Report 2007, <http://www.state.gov/j/tip/rls/tiprpt/2007/index.htm> (accessed February 9, 2013).

<sup>21</sup> Trafficking in Persons Report 2008, <http://www.state.gov/j/tip/rls/tiprpt/2008/index.htm> (accessed 9 February 2013).

<sup>22</sup> Trafficking in Persons Report 2012, <http://www.state.gov/documents/organization/192587.pdf> (accessed 9 February 2013).

<sup>23</sup> Trafficking in Persons Report 2005, <http://www.state.gov/j/tip/rls/tiprpt/2005/index.htm> (accessed 9 February 2013); Trafficking in Persons Report 2006, <http://www.state.gov/j/tip/rls/tiprpt/2006/index.htm> (accessed 9 February 2013); Trafficking in Persons Report 2007, <http://www.state.gov/j/tip/rls/tiprpt/2007/index.htm> (accessed 9 February 2013); Trafficking in Persons Report 2008, <http://www.state.gov/j/tip/rls/tiprpt/2008/index.htm> (accessed 9 February 2013); Trafficking in Persons Report 2009, <http://www.state.gov/j/tip/rls/tiprpt/2009/index.htm> (accessed February 2013); Trafficking in Persons Report 2010, <http://www.state.gov/j/tip/rls/tiprpt/2010/index.htm> (accessed February 2013); Trafficking in Persons Report 2011, <http://www.state.gov/j/tip/rls/tiprpt/2011/index.htm> (accessed February 2013); Trafficking in Persons Report 2012, <http://www.state.gov/documents/organization/192587.pdf> (accessed February 2013).

<sup>24</sup> Trafficking in Persons Report 2003, <http://www.state.gov/j/tip/rls/tiprpt/2003/index.htm> (accessed 9 February 2013); Trafficking in Persons Report 2011, <http://www.state.gov/j/tip/rls/tiprpt/2011/index.htm> (accessed 9 February 2013); Trafficking in Persons Report 2012, <http://www.state.gov/documents/organization/192587.pdf> (accessed 9 February 2013); National Report on preventing and combating trafficking in human beings for 2011. p.13.

such assistance had only been provided by non-governmental and international organizations.<sup>25</sup> In 2008, the Government of the Republic of Moldova adopted the Regulations that were designed to facilitate and finance the repatriation of victims of trafficking. An increase in funding for regional centres is taking place. The local authorities are allocating increasingly more funds for the implementation of such programs.<sup>26</sup>

Second, in 2002-2003, it was announced that the victims of trafficking would not be liable for crimes committed during the period of trafficking (prostitution, illegal border crossings, etc.).<sup>27</sup> However, the practice has shown that this principle was often violated, and sometimes the law enforcing agencies prosecuted victims of trafficking.<sup>28</sup> This prosecution is often justified by the need to punish the organizers of trafficking, the necessity to force cooperation in the process of investigation and references to the Criminal Code of the Republic of Moldova (2002), which stipulates that “the victims are exempt from any liability if they cooperate with the investigation.”<sup>29</sup> The process of renouncing the practice of connecting punishment to any cooperation with the investigation is proceeding in a very uneasy manner: there are signals from non-governmental organizations highlighting the prosecution of trafficking victims for crimes committed during the period of trafficking in 2011.

Third, the protection of witnesses. Practice has shown that victims are often reluctant to cooperate in a criminal investigation of cases of human trafficking due to fear of retaliation by the traffickers.<sup>30</sup> The reason is that the state is unable to provide comprehensive victim protection measures and, in fact, does not abide by the law “On the Protection of Witnesses” (1998), although it does sometimes provide external security for the victims’ homes.<sup>31</sup> Since 2009, a special unit for the mental and physical protection of victims and witnesses operates within the Centre for Trafficking Prevention. A new law on witness protection was adopted in 2008.<sup>32</sup> As a result, a number of trafficking victims who are willing to cooperate and testify in court against the organizers of trafficking is growing.<sup>33</sup>

Fourth, compensations to the victims of human trafficking. Experience has shown that the Moldovan authorities have a great unrealized potential in this field. In June 2005, the Parliament amended the law on social protection and employment. According to these amendments, representatives of socially vulnerable groups and victims of human trafficking are eligible to receive government allowances. However, the victims of trafficking were not informed about this.<sup>34</sup> The U.S. Department of State notes that these allowances have been granted to the victims of human trafficking since 2012.<sup>35</sup>

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<sup>25</sup>Trafficking in Persons Report 2007, <http://www.state.gov/j/tip/rls/tiprpt/2007/index.htm> (accessed 9 February 2013).

<sup>26</sup>Trafficking in Persons Report 2012, <http://www.state.gov/documents/organization/192587.pdf> (accessed 9 February 2013).

<sup>27</sup>Trafficking in Persons Report 2003, <http://www.state.gov/j/tip/rls/tiprpt/2003/index.htm> (accessed 9 February 2013).

<sup>28</sup> Trafficking in Persons Report 2007, <http://www.state.gov/j/tip/rls/tiprpt/2007/index.htm> (accessed 9 February 2013); Trafficking in Persons Report 2008, <http://www.state.gov/j/tip/rls/tiprpt/2008/index.htm> (accessed 9 February 2013).

<sup>29</sup>Trafficking in Persons Report 2004, <http://www.state.gov/j/tip/rls/tiprpt/2004/index.htm> (accessed 9 February 2013).

<sup>30</sup>Trafficking in Persons Report 2004, <http://www.state.gov/j/tip/rls/tiprpt/2004/index.htm> (accessed 9 February 2013); Trafficking in Persons Report 2005, <http://www.state.gov/j/tip/rls/tiprpt/2005/index.htm> (accessed 9 February 2013).

<sup>31</sup>Trafficking in Persons Report 2005, <http://www.state.gov/j/tip/rls/tiprpt/2005/index.htm> (accessed 9 February 2013); Trafficking in Persons Report 2006, <http://www.state.gov/j/tip/rls/tiprpt/2006/index.htm> (accessed 9 February 2013).

<sup>32</sup> Trafficking in Persons Report 2009, <http://www.state.gov/j/tip/rls/tiprpt/2009/index.htm> (accessed 9 February 2013).

<sup>33</sup> Trafficking in Persons Report 2011, <http://www.state.gov/j/tip/rls/tiprpt/2011/index.htm> (accessed 9 February 2013); Trafficking in Persons Report 2012, <http://www.state.gov/documents/organization/192587.pdf> (accessed 9 February 2013).

<sup>34</sup>Trafficking in Persons Report 2006, <http://www.state.gov/j/tip/rls/tiprpt/2006/index.htm> (accessed 9 February 2013).

<sup>35</sup>Trafficking in Persons Report 2012, <http://www.state.gov/documents/organization/192587.pdf> (accessed 9 February 2013).

Fifth, foreign nationals are sometimes also identified among the victims of trafficking. The Republic of Moldova did not provide such victims with legal alternatives in the form of a temporary residence permit in the Republic of Moldova to motivate them to cooperate in investigations with criminal justice authorities,<sup>36</sup> despite the fact that revenge awaits them at their home countries.<sup>37</sup> In 2010-2011, some positive developments could be observed: foreign victims of trafficking were provided with a legal alternative in the form of a residence permit for the required duration.<sup>38</sup> However, the amendments to the Law on Foreigners (2012) require that foreign victims of human trafficking participate in criminal prosecution and cooperate with investigation agencies as a precondition for obtaining a residence permit.<sup>39</sup>

Sixth, work with specific groups of victims of human trafficking. Non-governmental organizations drew attention to the fact that the police lacked experience of working with children as a special group of victims: children were interrogated continuously for several hours a day.<sup>40</sup> Special regulations for the protection of child victims of trafficking were thus developed. The police began to work with children more professionally. It started to take into account the specificity of child psychology, as well as to use non-governmental organizations and child psychologists.

A similar pattern is observed with regard to the victims of human trafficking with disabilities. With the help from the IOM, 11 victims of trafficking with physical and mental disabilities were provided various kinds of services and assistance.<sup>41</sup>

Seventh, training and education are provided to employees of state structures authorized to provide aid and assistance to actual and potential victims of trafficking. For this purpose, in 2006, the government, together with the IOM, initiated a program to develop the capacity of consular services abroad to help actual and potential victims of trafficking.<sup>42</sup> A similar program designed to identify actual and potential victims of human trafficking has been carried out in relation to border guards/border police. As a result of this training, in 2011-2012, the border guards identified more than 110 potential victims of human trafficking.<sup>43</sup>

## Human trafficking prevention

In this respect there are some positive developments. Previously (from 2000 to 2008), the government acknowledged the danger of human trafficking, but the fight against trafficking was not identified as a priority area. The government has collaborated with NGOs and international organizations, but most of the activities to inform the public about the dangers of trafficking were initiated and financed by international agencies and non-governmental organizations without the government's help.

Among the activities carried out directly by the state agencies one can mention the licensing of travel agencies by the State Migration Service. The Ministry of Labour implemented community-based training of 60 instructors, who are authorized to work with women in preventing instances of human trafficking (2003). A special TV programme dedicated to the fight against human trafficking

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<sup>36</sup> Trafficking in Persons Report 2008, <http://www.state.gov/j/tip/rls/tiprpt/2009/index.htm> (accessed 9 February 2013).

<sup>37</sup> Trafficking in Persons Report 2009, <http://www.state.gov/j/tip/rls/tiprpt/2009/index.htm> (accessed 9 February 2013).

<sup>38</sup> Trafficking in Persons Report 2011, <http://www.state.gov/j/tip/rls/tiprpt/2011/index.htm> (accessed 9 February 2013); Trafficking in Persons Report 2012, <http://www.state.gov/documents/organization/192587.pdf> (accessed 9 February 2013).

<sup>39</sup> Trafficking in Persons Report 2012, <http://www.state.gov/documents/organization/192587.pdf> (accessed 9 February 2013).

<sup>40</sup> Trafficking in Persons Report 2010, <http://www.state.gov/j/tip/rls/tiprpt/2010/index.htm> (accessed 9 February 2013).

<sup>41</sup> Trafficking in Persons Report 2012, <http://www.state.gov/documents/organization/192587.pdf> (accessed 9 February 2013).

<sup>42</sup> Trafficking in Persons Report 2006, <http://www.state.gov/j/tip/rls/tiprpt/2006/index.htm> (accessed 9 February 2013).

<sup>43</sup> Trafficking in Persons Report 2012, <http://www.state.gov/documents/organization/192587.pdf> (accessed 9 February 2013).



was broadcasted on a state channel. In 2005, the Ministry of the Interiors withdrew licenses from a number of travel and employment agencies known to have been involved in human trafficking.

One of the means of trafficking prevention is informational activities conducted with at-risk groups: school and university students, girls and young women, especially in rural areas. To this end, meetings are held in schools and institutions of higher education in rural areas. Seminars and workshops with opinion leaders are held: priests, doctors, teachers, and representatives of the local administration. On the whole, however, as has been pointed out by international organizations, the Government's efforts remain insufficient.

After the new government came to power (in 2009), the situation has changed for the better. The activities of the Centre for Trafficking Prevention in informing the public (interviews on radio and television, workshops in schools and universities) became much more visible. The National Committee for Trafficking Prevention is likewise more active in its coordination efforts. There is also a positive trend of working with non-governmental and international organizations: public information campaigns are carried out in close co-operation between the government agencies and civil society. The Ministry of Economy and Commerce organizes free training programmes for returned trafficking victims (jointly with IOM). The Ministry of Foreign Affairs and European Integration (MFAEI) is continuing the project of training the consular staff for working with the victims of trafficking.

One should also note the role of the MFAEI information centre in informing the public about the procedures of travelling abroad, employment and state assistance provided to its citizens abroad. At the local level campaigns are carried out to inform people of the dangers and risks of human trafficking and domestic violence within the framework of the "16 Days of Activism against gender-based violence" programme, entitled "From peace in the home to peace in the world." Meetings with the employees of the local administration are held regularly.<sup>44</sup>

In 2011, the Ministry of Labour conducted training programmes involving 185 members of the regional commissions of the National Reference System. Work on verifying the results of their activities has been rather inconsistent: in 2010, 16 districts were tested; in 2011, none.<sup>45</sup> Since March 2012, Moldova has begun the application of the code of conduct for tourism businesses, with the goal of informing foreign tourists of the provisions of the Law of the Republic of Moldova against the sexual exploitation of children.<sup>46</sup>

At the same time, experts from international and non-governmental organizations point out that there is a need to strengthen prophylactic and information activities aimed at reducing the demand for commercial sex and forced labour in the country.<sup>47</sup>

## International cooperation

On February 28, 2011 at a conference in Ljubljana, Slovenia and the Republic of Moldova signed a memorandum on consolidated cross-border measures against trafficking by forming common investigation teams and creating a new mechanism to combat human trafficking, which will help to improve trafficking prevention at regional level.<sup>48</sup>

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<sup>44</sup> National Report on preventing and combating trafficking in human beings for 2011, p.16.

<sup>45</sup> Trafficking in Persons Report 2011, <http://www.state.gov/j/tip/rls/tiprpt/2011/index.htm> (accessed 9 February 2013).

<sup>46</sup> Trafficking in Persons Report 2012, <http://www.state.gov/documents/organization/192587.pdf> (accessed 9 February 2013).

<sup>47</sup> Trafficking in Persons Report 2010, <http://www.state.gov/j/tip/rls/tiprpt/2010/index.htm>, (accessed 9 February 2013); Trafficking in Persons Report 2011, <http://www.state.gov/j/tip/rls/tiprpt/2011/index.htm>, (accessed 9 February 2013); Trafficking in Persons Report 2012, <http://www.state.gov/documents/organization/192587.pdf> (accessed 9 February 2013).

<sup>48</sup> National Report on preventing and combating trafficking in human beings for 2011, p.6.

In the framework of international cooperation, monitoring by the U.S. Department of State has been in effect since 2000. The USA provides a lot of help and support in training Moldovan specialists for trafficking prevention. In the period from 2001 to 2007, there have been several projects in this area executed with the help of the USA. Since 2010, the monitoring has also been carried out by the European Union: the GRETA group of experts is active here.<sup>49</sup>

The EUBAM Mission plays a significant role in the implementation of partnership and cooperation programmes. Under its auspices two phases of international operations “Ackermann-2011” and “Interception-2011” were organized and implemented. The purpose of these operations was to develop joint activities in trafficking prevention.<sup>50</sup> In 2011, 14 anti-trafficking applications from international commissions were taken for execution.

The Republic of Moldova is actively cooperating with the relevant structures of many of the EU countries, Russia and the CIS. In 2011, within the framework of experience exchange, training took place with representatives of Belarus, Tajikistan and Afghanistan.

### **Cooperation with non-governmental organizations**

The Moldovan authorities have carried out close cooperation in human trafficking prevention with international organizations (IOM, OSCE) and non-governmental organizations («La Strada», «Medicine du Monde», «Stimul», «Terre des Hommes», CNPAC, etc.), whose freedom to act is ensured by the law №241 of 21 October 2005.

To strengthen cooperation, the practice of signing agreements (“Memorandums”) with non-governmental organizations is widely used. Back in 2005, in the absence of a national reference system, agreements were signed in the field of statistics with two major non-governmental organizations that have assisted hundreds of victims of human trafficking.<sup>51</sup> In 2008, the Ministry of the Interior signed an agreement with IOM on the unimpeded repatriation of the victims of trafficking.<sup>52</sup> In 2011-2013, the Centre for Trafficking Prevention signed agreements on cooperation with the NGO “National Centre for Prevention of Child Abuse”; with the Agency for Transplantations of the Health Ministry on cooperation in the field of protection of the physical integrity of citizens and the prevention of illegal transplantation of organs, tissues and cells; with the Center of Journalist Investigations<sup>53</sup>; with the international centre «La Strada»,<sup>54</sup> etc.

Civil society and non-governmental organizations carry out diverse and multifaceted activities in trafficking prevention and the protection of witnesses. A great work on informing the population is carried out by the international centre «La Strada»: a hotline, dispensing assistance and legal counseling and information, is in constant operation, etc.<sup>55</sup>

With the help of international and non-governmental organizations (IOM Moldova, the international centre «La Strada», OSCE in Moldova, «Medicine du Monde», the Swiss fund «Terre des Hommes») and the U.S. Embassy in the Republic of Moldova, several national and international seminars for professionals in the field of human trafficking prevention have been organized. Training activities are also supplemented by practical guides, and methodological and didactic materials. In this

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<sup>49</sup> Ibid, p.6.

<sup>50</sup> Ibid, p.14.

<sup>51</sup> Trafficking in Persons Report 2005, <http://www.state.gov/j/tip/rls/tiprpt/2005/index.htm>(accessed 9 February 2013).

<sup>52</sup> Trafficking in Persons Report 2008, <http://www.state.gov/j/tip/rls/tiprpt/2008/index.htm>(access 9 February 2013).

<sup>53</sup> National Report on preventing and combating trafficking in human beings for 2011, p.15.

<sup>54</sup> <http://www.mai.gov.md/content/21950>

<sup>55</sup> [http://www.lastrada.md/programe/cdr/linia\\_fierbinte](http://www.lastrada.md/programe/cdr/linia_fierbinte), (accessed 9 February 2013).

regard the activities of «La Strada», which conducts advocacy and methodical work against child abuse for commercial purposes related to sex industry, are exemplary.<sup>56</sup>

Multiple kinds of assistance to the National Committee and its permanent secretariat for trafficking prevention are provided by the IOM and OSCE.

For the third year in a row, the IOM and the “Alliance of Civilizations” jointly held the video/photo contest “PLURAL + MOLDOVA 2011” - «Migrație și Diversitate». The National Centre for preventing violence against children carries out an extensive information campaign to prevent and combat the trafficking of children - «Atingere indecentă» (indecent touching).<sup>57</sup>

The Swiss Foundation «Terre des Hommes» is actively involved in the protection of victims of trafficking and is implementing several large and important projects in the field of human trafficking prevention. For example, in 2011, the Ministry of Labour, Social Protection and Family of the Republic of Moldova repatriated 26 Moldovan children from abroad. The repatriation of 15 children from the Russian Foundation has been carried out by the Fund on its own. This organization provided information and social-psychological assistance to 2,150 children and 800 parents.<sup>58</sup>

A new trend is visible in the activities of non-governmental organizations, namely that of taking part in the investigation of human trafficking together with governmental agencies.<sup>59</sup> In general, one should note the positive nature of the relationship and cooperation between the state and civil society in the Republic of Moldova in their fight against human trafficking.

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<sup>56</sup> [http://lastrada.md/publicatii/ebook/Audierea\\_copiilor](http://lastrada.md/publicatii/ebook/Audierea_copiilor), (accessed 10 February 2013).

<sup>57</sup> <http://www.youtube.com/watch?v=2tiHYg5DTZI> (accessed 10 February 2013).

<sup>58</sup> National Report on preventing and combating trafficking in human beings for 2011, p. 21.

<sup>59</sup> Trafficking in Persons Report 2012, <http://www.state.gov/documents/organization/192587.pdf> (accessed 9 February 2013).

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**Human Trafficking  
Trends in Ukraine**

**OLEKSII POZNIAK**

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Ukraine's involvement in global migration processes after the fall of the Iron Curtain and dissolution of the Soviet Union has been a simple fact. But one of the negative consequences of the outward labor migration of Ukrainian nationals has been that human trafficking emerged and became increasingly frequent. In the 1990s and the early 2000s, Ukraine was a country of origin and to some extent a country of transit for persons who found themselves in the situation of slavery. Over recent years Ukraine has increasingly become a country of destination for human-trafficking victims, while cases of domestic trafficking within Ukraine are also widespread.

A number of studies were carried out in Ukraine in the 2000s, in order to explore human-trafficking issues, including studies in cooperation with international organizations (IOM, ILO etc.). Despite these studies, however, the quantitative parameters of this phenomenon have not been estimated for a long time. The scale of human trafficking was properly assessed, for the first time, in a long-term study carried out by Dr. Ronald Hampton and Dr. Dwayne Ball of the University of Nebraska (Lincoln)<sup>1</sup>. The study dealt though only with Ukrainian nationals who became human trafficking victims abroad. It did not cover victims of domestic human trafficking and foreign nationals imported to Ukraine and transferred over its territory.

The study comprised three surveys:

1. A survey of families in five Eastern European countries, including Ukraine, in collaboration with IOM in the fall of 2006. This survey was relatively small (1,345 families were interviewed in Ukraine).
2. A survey of key informers in Ukraine in October 2007. Here the Nebraska team interviewed supervising instructors with significant work experience and elderly women ('babushkas') about the frequency of human trafficking cases among populations that these key informants knew well.
3. A set of questions aimed at obtaining information on human trafficking. This was then included in the questionnaire of the Demographic and Health Survey (UDHS) carried out in Ukraine in the first half of 2007. 6,841 women and 3,178 men aged 15-49 were surveyed.

According to the estimates obtained, in the mid-2000s every year at least 22,000 Ukrainian nationals found themselves enslaved overseas. The total number of human-trafficking victims was at least 110,000 persons over three to five years before the study. However, the data obtained should rather be regarded as a minimum estimate, taking into account the probable degree of respondents' sincerity. For instance, UDHS indicates that almost every tenth (9.6%) respondent personally knew a human trafficking victim. In the course of the three years before the study 0.3% of all household members aged 15-64 or 0.7% of the household members aged 18-44 dealt with situations typical for human trafficking while abroad<sup>2</sup>. These are 7.5% of all household members who worked overseas in the course of the last three years before the study.

In addition to the scale of human trafficking, UDHS effectively evaluated the awareness of human-trafficking problems among the population. The first of the three surveys mentioned above helped compare the spread of human trafficking in Ukraine and other Eastern European countries. The survey of families was carried out in Belarus, Bulgaria, Moldova and Romania. It relied on the same program as in Ukraine. According to the estimates obtained, Ukraine ranks first among the five countries in terms of the number of human trafficking victims. It had twice as many victims as Moldova, which ranks second, and eleven times more than Belarus that ranks fifth. However, this naturally changes if you look at

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<sup>1</sup> Ball D., Hampton R. Estimating the Extend of Human Trafficking from Ukraine. – Kiev, 2009.

<sup>2</sup> Ukrainian Center of Social Reforms (UCSR), State Committee of Statistics (State Statistics Committee) [Ukraine], Ministry of Healthcare (MH) [Ukraine] and Macro International Inc. 2008, Ukraine Demographic and Health Survey 2007. Calverton, Maryland, USA: UCSR and Macro international

human-trafficking relative to population. In Ukraine this parameter will be much lower than in Moldova and somewhat lower than in Bulgaria, while visibly higher than in Belarus and Romania.

Research carried out by Ukrainian experts has helped identify the categories of the Ukrainian population most vulnerable to human trafficking<sup>3</sup>:

- Women aged 18-26, primarily single, with low or very low living standards, (as potential victims of sexual exploitation);
- Men aged 31-60, primarily married (vulnerable to labor exploitation);
- Children (primarily girls) aged 13-18 from single-parent and “restructured” families.

The Criminal Investigation Department of the Ukrainian Ministry of Interior has a Division for human trafficking and vice. This division keeps records of registered crimes associated with human trafficking and criminal cases related to article 149 of the Ukrainian Criminal Code (article 124-1 of the previous Criminal Code) where verdicts were delivered by Ukrainian courts. The number of crimes kept rising until 2005 and then started to decline (table 1).

**Table 1. The number of crimes registered and the number of verdicts delivered by Ukrainian courts for cases related to article 149 (previously article 124-1) of the Ukrainian Criminal Code**

Year	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Number of crimes	2	11	42	91	169	289	269	415	376	359	322	279	257	197	162
Number of verdicts	-	1	1	2	10	29	62	86	75	83	69	71	85	106	96

Source: data of Ukrainian Ministry of Interior

3,240 crimes were registered in this field by the Ukrainian Ministry of Interior 1998-2012 and the courts delivered 776 verdicts. Over recent years the number of registered crimes went down, while the number of verdicts went up. This indicates the enhanced efficiency of law enforcement agencies in the combat against human trafficking. In recent years the Ukrainian government achieved certain success in this field. In 2005-2010 there was a Department at the Ministry of Interior for crimes associated with human trafficking; now its functions are performed by the Department of Criminal Investigation. 1 March 2007 the Ukrainian Cabinet of Ministers adopted a State Program against human trafficking up until 2010. Public awareness was raised during implementation by using the mass media; the fight against human trafficking was included in educational programs for the young; the efficiency of law enforcement agencies fighting against human trafficking was enhanced; cooperation between Ukrainian law enforcement agencies and other countries was strengthened; and assistance was rendered to human-trafficking victims, not least on their return home.

20 September 2011 Ukrainian Verkhovna Rada passed a Law “On Counteraction against Human Trafficking”<sup>4</sup>. This Law establishes the organizational and legal foundations for: the suppression of human trafficking; the key directions of government policy and the principles of international cooperation in this field; and the scope of authority of executive bodies, procedure for determining the

<sup>3</sup> Social analysis of the main factors of human trafficking: real situation and ways to prevent / A.V. Alekseeva, Yu.M. Galustyan, I.A. Shvab etc. – Kiev, State Family and Youth Institute, 2003 [in Ukrainian]; human trafficking from Ukraine for the purpose of labor and sexual exploitation: draft report – Kiev, Research Institute of Labor and Employment, 2003 [in Ukrainian]; Prevention of trafficking in children for the purpose of their use for forced labor and sexual exploitation: draft report of the sociological research for the purpose of quick evaluation – Kiev, Center of Social Expertise of the Institute of Sociology of the Ukrainian National Academy of Sciences, 2003 [in Ukrainian].

<sup>4</sup> <http://zakon2.rada.gov.ua/laws/show/3739-17>



status of human trafficking victims and procedure for rendering assistance to such persons. The Ukrainian Cabinet by its Regulation of 21 March 2012 adopted the State Target-Oriented Social Program for the Counteraction against Human Trafficking for the Period until 2015. This determines tasks and measures aimed at preventing human trafficking, enhancing the efficiency of assistance rendered to human-trafficking victims, ensuring proper law enforcement activities to suppress trafficking. It identifies the volume and the sources of funding for these activities.

However, despite significant efforts on the part of the Ukrainian government to eliminate human trafficking, Ukraine does not yet fully correspond to even minimum world standards in this field. According to the 2012 Trafficking in Persons Report<sup>5</sup> published by the US State Department experts on the basis of 2011 results, Ukraine is a second-league country: countries whose state agencies do not fully comply with minimal standards of the Law on the protection of human-trafficking victims, but which undertake significant efforts to bring their activities into compliance with these standards. The insufficient efficiency of state agencies fighting human trafficking is demonstrated by the low awareness of the Ukrainian population about this phenomenon. According to UDHS (2007) 48% of respondents have never heard of human trafficking cases; 51% of respondents could not assess their own risk of becoming human-trafficking victims; and 56% of respondents could not estimate whether the risk of becoming a human-trafficking victim had gone up or down over the three years prior to the survey. All three parameters are lower in the cities than in the villages and go down with better education and prosperity (table 2).

**Table 2. Dependence of awareness about human trafficking problem on respondents' welfare, place of residence and level of education**

	Prosperity quintiles					Place of residence		Level of education	
	highest	above average	average	below average	lowest	city	village	higher	no higher
The share of persons who had never heard about human trafficking, %	64.4	52.0	47.1	43.4	30.0	43.9	58.5	37.7	57.2

Source: data of UDHS, 2007

The International Organization for Migration and non-governmental organizations take records of human-trafficking victims who asked them for help. Unfortunately this category is not representative of the general population of human-trafficking victims. The IOM has rendered assistance in the reintegration of human-trafficking victims since 2000. 9,111 human trafficking victims received assistance within the reintegration program of the IOM over 13 years. Their number was going up until 2007 and stabilized in 2008 (table 3). Before 2007 women were predominant in this population, but over recent years the ratio between two sexes became more balanced, and in 2012 men were somewhat dominant. 45.5% of victims who received assistance in 2004-2012 were subject to sexual exploitation and 49.4% to labor exploitation. Some were subjected to mixed forms of exploitation or were forced to beg. The share of persons subject to sexual exploitation among those who received assistance from the IOM is going down and the share of persons subject to labor exploitation is going up.

<sup>5</sup> US Department of State, Trafficking in Persons Report 2012. <http://www.state.gov/g/tip/rls/tiprpt/2012/>

**Table 3. Human-trafficking victims who received assistance from IOM, 2004-2012**

	2004	2005	2006	2007	2008	2009	2010	2011	2012
Number of victims, persons	626	828	937	1.121	820	773	1.085	823	945
Share of women, %	86.3	86.1	81.2	75.7	76.2	77.1	63.9	57.4	43.8
Share of persons who were subjected to sexual exploitation, %	64.4	67.4	63.6	51.8	47.8	51.4	34.0	24.7	13.2
Share of persons who were subjected to labor exploitation, %	30.4	28.0	34.1	44.9	49.3	43.6	56.4	69.7	80.5

Source: IOM data

Most victims came back to Ukraine from the following countries: Russia (3,535 persons in 2000-2012), Poland (1,236), Turkey (1,227), the Czech Republic (394), Italy (283), the United Arab Emirates (230), Germany (151), Portugal (140), Israel (133), Macedonia (123), Greece (122), Spain (100), and Serbia and Montenegro (93). Russia, Poland, the Czech Republic, Italy, Germany, Portugal, Spain and probably Greece are among the main recipients of Ukrainian workforce. So despite the relatively large absolute number, human-trafficking victims constitute a small share among migrants to those countries. Other countries mentioned above are not among key importers of workforce from Ukraine. Migration to the former Yugoslavia, Middle East and other developing countries is associated with the highest risk of becoming a human-trafficking victim. This fact is indirectly confirmed by data obtained in the course of UDHS (2007) on the different scale of human-trafficking in different Ukrainian regions. Thus, in the south of Ukraine 18% of labor migrants faced human trafficking, while in the other four large regions of the country this figure was 2-7%<sup>6</sup>. At the same time the highest share of persons working outside the EU, CIS and North America among labor migrants is also registered in the southern region according to the selective survey on labor migration (2008)<sup>7</sup>: 6.3% versus 1.8% for Ukraine in general.

Among those who received IOM assistance in 2000-2012 there were 536 persons who were subjected to human trafficking in Ukraine and 468 foreign nationals. 115 foreign nationals were imported to Ukraine as a country of destination and for 353 Ukraine was a country of transit. Among foreigners imported to Ukraine 47.8% of human trafficking victims were Moldovan citizens, 29.6% were citizens of Uzbekistan and 4.3% were citizens of Kyrgyzstan. Assistance to victims includes medical, psychological and legal aid, obtaining travel documents, provision of temporary accommodation, reintegration grants, restoration of documents, training, retraining etc. Over half of those who asked for help were given jobs (mostly in private business). IOM does a lot of work, but it covers only 9,000 people, i.e. less than a tenth of all human trafficking victims in Ukraine. Most do not come for help or remain abroad. In addition to the IOM, 30 non-governmental organizations render assistance for the reintegration of human-trafficking victims. They are located all over the country, in 23 cities of 22 (out of 27) regions of Ukraine.

<sup>6</sup> Ukrainian Center of Social Reforms (UCSR), State Committee of Statistics (State Statistics Committee) [Ukraine], Ministry of Healthcare (MH) [Ukraine] and Macro International Inc. 2008, Ukraine Demographic and Health Survey 2007. Calverton, Maryland, USA: UCSR and Macro international

<sup>7</sup> Ukrainian Centre for Social Reforms (UCSR), State Statistics Committee (SSCU) Ukrainian External Labour Migration. Kyiv, 2009.

Therefore, the problem of human-trafficking is very pressing for Ukraine. Despite certain successes achieved by the government, the risk of falling into the hands of human traffickers remains the most dangerous risk associated with outward labor migration.



**Some Aspects of Ukrainian  
Legislative Reform Relating  
to Combating against Human Trafficking**

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*Legal Module*



## 1. General context

The issue of combat against human trafficking is very pressing for Ukraine, just like for most post-Soviet countries. As it is indicated in the Migration Profile of Ukraine compiled in 2011 by Ukrainian migration experts based on research and on statistical data provided by Ukrainian national authorities and international specialists in the field of migration, Ukraine is primarily a state of origin for human trafficking victims<sup>1</sup>. Ukraine is also a country of transit for foreigners who became human trafficking or smuggling victims on their way to other countries, primarily Turkey or United Arab Emirates, from Moldova, Russia, Kyrgyzstan and Uzbekistan.

The 2010 US State Department Human Trafficking Report<sup>2</sup> indicates that Ukrainians who become victims of human trafficking are mostly shipped to Russia, Poland, Turkey, Italy, Austria, Spain, Germany, Czech Republic, Portugal, UAE, Israel and Greece.

According to official statistics of the International Organization for Migration (IOM) office in Ukraine, 823 Ukrainians became human trafficking victims in 2011 and 945 Ukrainian nationals in 2012. IOM also rendered assistance in the territory of Ukraine to 14 foreign nationals (citizens of Moldova, Russia, Belarus, Kazakhstan, Kyrgyzstan, Uzbekistan) who became victims of human trafficking in 2011 (there is no statistics for 2012)<sup>3</sup>.

In our opinion, these figures may not fully reflect the real number of Ukrainian citizens who became human trafficking victims, as far as they register only those cases when victims contacted IOM and received assistance from IOM.

Competent Ukrainian authorities, such as the Ministry of Interior, collect and make public official statistics on the open criminal cases related to human trafficking (without providing statistics on the number of citizens who became targets of this offense). Thus, according to the official data of Ukrainian Ministry of Interior, 172 criminal cases related to human trafficking were initiated in 2011, while 151 cases were initiated over 9 months of 2012<sup>4</sup>.

In our point of view, there are two main aspects in the combat against human trafficking in Ukraine – socio-economic and legal. Therefore, low living standards (especially in the villages and small district centers), lack of necessary qualification and employment opportunities, lack of decent public social assistance for unemployed and disadvantaged persons are the main factors that force Ukrainians to look for employment opportunities abroad. At the same time insufficient awareness of these population categories about legal procedures for employment abroad, as well as lack of financial resources for legal search of employment in other countries make them potential victims of human traffickers.

## 2. Legal framework

From the legal standpoint, we see the following measures as key for overcoming the problem of human trafficking in Ukraine: tightening of legislative sanctions against persons involved in human trafficking offenses and persons assisting them, informing citizens about their rights in the context of labor migration and normative procedures of legal employment abroad.

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<sup>1</sup> Migration profile of Ukraine is available at <http://rv.dmsu.gov.ua/images/files/%20%202012%2014.02.2013.pdf>

<sup>2</sup> Human Trafficking Report of the US State Department is available at <http://www.state.gov/j/tip/rls/tiprpt/2011/>

<sup>3</sup> Official statistics of the IOM office in Ukraine is available at <http://en.stoptrafficking.org/view.statistics/>

<sup>4</sup> Official statistics of the Ukrainian Ministry of Interior <http://mvs.gov.ua/mvs/control/main/uk/publish/article/750044>

As a result of our analysis of Ukrainian legislation, we have established that Ukraine put in place legislative instruments to combat human trafficking. Thus, Ukrainian State Migration Policy Concept, Ukrainian Law “On counteraction to human trafficking” of 20.09.2011 No. 3739-VI, as well as Regulation of the Ukrainian Cabinet of Ministers of 18 January 2012 No. 29 “On national coordinator in the field of combat against human trafficking”, Regulation of the Ukrainian Cabinet of Ministers of 15 February 2009 No. 90-r “On Concept of the State Target-Oriented Social Program of Combat against Human Trafficking until 2015”, and Ukrainian Criminal Code (Law of 05.04.2011 No. 2341-III) represent a rather comprehensive set of legal instruments in the indicated field. In addition to that, starting from 2010 Ukraine is a party to the Council of Europe Convention on Action against Trafficking in Human Beings.

According to the Migration Policy Concept adopted by the presidential decree of 30 May 2011 No. 622/2011<sup>5</sup>, combat against human trafficking is a strategic direction of Ukrainian migration policy. The novelty in Ukrainian legislation is that the Law “On counteraction to human trafficking”<sup>6</sup> clearly defines the notion of ‘human trafficking’ (execution of an illegal agreement, the object of which is a human being, as well as recruitment, transportation, harbouring, transfer or receipt of a human being, carried out for the purpose of exploitation, including sexual one, using deceit, fraud, blackmail, unprotected state of a person or using threat of violence, using job position or material or other dependence of a person, which is a crime under the Criminal Code of Ukraine), the notion of ‘human trafficking prevention’ (complex of measures aimed at detecting and eliminating the reasons and conditions that can lead to human trafficking) and ‘suppression of human trafficking’ (complex of measures aimed at overcoming human trafficking by way of prevention and suppression, as well as rendering assistance and protection to the victims of human trafficking).

One should also note that section V of the Law regulates **assistance and protection offered to the victims of human trafficking (articles 13-19 of the Law)**. For instance, article 14 of the Law establishes the rights of a person who applied for the status of the human trafficking victim: the person who contacted the local administration with the corresponding application and the law enforcement agencies asking for protection of rights and freedoms has a right to free of charge information on his or her rights and opportunities provided in the language this person knows; medical, psychological, legal and other assistance regardless of the place of residence; temporary placement in facilities for human trafficking victims (part 2 of article 14 of the Law).

Foreigner or stateless person who applied for the status of the human trafficking victim in the territory of Ukraine, until the decision about his or her status is made, in addition to rights envisaged by part 2 of this article also has a right to free of charge interpreter services and temporary stay in Ukraine according to procedure set forth in the legislation (part 3 of article 14 of the Law).

Under part 4 of article 15 of the Law a foreigner or stateless person who applied for the status of the human trafficking victim in the territory of Ukraine is given a certificate confirming the fact of application for this status and launch of the corresponding procedure that serves as grounds for registration in the territorial divisions of the authorized central executive agency responsible for migration issues. It is forbidden to place the person who applied for the human trafficking victim in temporary detention facilities, except for cases stipulated by law, and expulsion of this person from Ukraine until the status of the human trafficking victim is granted (part 5 article 14 of the Law).

Procedure of granting the status of the human trafficking victim cannot take longer than one month from the day of interview with a person at the local public administration (part 3 article 15 of the Law).

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<sup>5</sup> Decree of the Ukrainian President of 30 May 2011 No. 622/2011 is available at <http://zakon4.rada.gov.ua/laws/show/622/2011>

<sup>6</sup> The Law of Ukraine “On counteraction to human trafficking” of 20.09.2011 No. 3739-VI <http://zakon4.rada.gov.ua/laws/show/3739-17>



If decision is made to grant the status of the human trafficking victim, the person in question is issued a certificate. If the status is denied, applicant has a right to appeal this decision within the judicial procedure (part 4 article 15 of the Law). Status of the human trafficking victim is granted for the period of up to two years. It can be extended on the basis of substantiated application of the local public administration for no longer than one year (part 5 article 15 of the Law).

In order to strip the human trafficking victim of the corresponding status, one has to find out that decision on setting or extending the period of this status has been made on the basis of false facts or invalid documents that played a significant role in the decision-making process (part 6 article 15 of the Law). The status of the human trafficking victim is lost, when the period for which the status was granted or extended, in accordance with part 5 article 15 of the Law, expires (part 7 article 15 of the Law).

**The rights of the human trafficking victim** are established by article 16 of the Law. In accordance with part 2 of article 16 of the Law foreigner or stateless person, who was granted the status of the human trafficking victim in the territory of Ukraine, has the right to free of charge interpreter services; temporary stay in Ukraine for the period of up to three months that can be extended if necessary, for instance, if they are involved in the criminal proceedings as complainants or witnesses; permanent residence in the territory of Ukraine according to procedure established by legislation (part 2 of article 16 of the Law).

Certificate of the human trafficking victim serves as grounds for registration in the territorial divisions of the authorized central executive agency responsible for migration issues (part 3 of article 16 of the Law).

If agents in charge of suppression of trafficking in persons have reasonable grounds to believe that the life, physical or mental health or freedom and inviolability of the foreign national or stateless person who is a human trafficking victim will face a threat in case of return to the country of origin, this person's status of the human trafficking victim can be extended, which serves as grounds for obtaining permission to stay in the territory of Ukraine until such circumstances cease to exist (part 4 article 16 of the Law). The person, who was granted the right of stay in Ukraine in accordance with part 4 of article 16 of the Law and who continuously resided in the territory of Ukraine in the course of three years from the day when the status of the human trafficking victim had been granted, has a right to obtain permission for immigration within the procedure established by legislation (part 5 of article 16 of the Law).

Article 19 of the Law regulates issues associated with **repatriation** of foreign nationals and stateless persons who are victims of human trafficking. For instance, after the rehabilitation course in accordance with the Law a foreign national or stateless person can be repatriated within the procedure established by legislation (part 1 of article 19 of the Law).

Section VI of the Law regulates suppression of trafficking in persons (articles 20-24 of the Law). If in Ukraine a victim of child trafficking is identified and is a foreign national or stateless person, one of the following decisions is made: return of the child to the country of origin; leaving the child in Ukraine (part 1 of article 24 of the Law). Part 2 of the same article states that the victim of child trafficking is to be returned to the country of origin provided that parents, legal guardians or child protection agencies of the country of child's origin give consent and have an opportunity to take up responsibility for the child and offer him or her proper assistance and protection. The victim of child trafficking is left in Ukraine, if his or her return to the country of origin is impossible and if there are conditions for the child's integration in Ukraine in terms of healthcare, education, social protection. When decision is made on whether to return or leave the child, one must rely on the child's opinion, taking into account the child's age, physical and intellectual development and interests (part 3 of article 24 of the Law). The child victim of human trafficking is not returned to the country of origin, if there are reasons to believe that this return poses a threat to his or her safety and is not in the child's best interests (part 4 of article 24 of the Law).

Analyzing Ukrainian legislation in the field of combat against human trafficking, one cannot ignore the strengthening of punishment of persons involved in human trafficking. Thus, in 2011 amendments were introduced into the Criminal Code<sup>7</sup> and other Ukrainian legal acts, in order to strengthen legal liability of persons involved in human trafficking and offenses against human will, honor and dignity. According to these amendments, persons convicted for crimes, associated with trafficking in human beings or other illegal agreement with regards to a human being, are not subject to amnesty (article 4 of the Law “On Amnesty”<sup>8</sup>); crimes against human will, honor and dignity, including illegal use of child labor, are punished by arrest for the period from 6 months to 3 years (article 150 of the Ukrainian Criminal Code); crimes associated with trafficking in human beings or execution of another illegal agreement, the object of which is a human being, as well as recruitment, transportation, harbouring, transfer or receipt of a person for the purpose of exploitation, using deceit, blackmail or vulnerable state of a person<sup>9</sup>, are punished by arrest for the period from 3 to 8 years with or without confiscation of property, and if the above indicated actions are committed with regards to an underage person – for the period from 5 to 12 years with or without confiscation of property (article 149 of the Criminal Code) etc.

### 3. Institutional framework

Instruments of combat against human trafficking are strengthened. Ukrainian Government determined that Ukrainian Ministry of Social Policy and Labor would coordinate the governmental policy in the field of combat against human trafficking<sup>10</sup>.

A lot of attention is paid in the Concept of State Target-Oriented Social Program of Combat against Human Trafficking until 2015<sup>11</sup> to the need for socio-economic reform in Ukraine with a purpose of enhancing the quality of life for Ukrainian citizens as a key measure to prevent human trafficking.

One should note that the Ministry of Social Policy and Labor cooperates with other Ukrainian agencies (State Migration Service, Ministry of Interior, Ministry of Foreign Affairs, State Border Service etc.), as well as with international governmental and non-governmental organizations (International Organization for Migration, International Women's Rights Center “La Strada Ukraine” etc.).

Based on everything mentioned above, one can make a conclusion that Ukraine has a sufficient legal and institutional basis for efficient state policy in the field of combat against human trafficking. At the same time efficient implementation of working measures in the field of combat against human trafficking, in our point of view, is closely linked to socio-economic reforms and enhancement of the living standards in Ukraine.

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<sup>7</sup> Ukrainian Criminal Code (Law of Ukraine No. 2341 of 05.04.01) is available at <http://zakon4.rada.gov.ua/laws/show/2341-14?nreg=2341-14&find=1&text=149&x=0&y=0>

<sup>8</sup> Law of Ukraine No. 3465-VI of 2.06.11 “On amnesty” is available at <http://zakon4.rada.gov.ua/laws/show/3465-17>

<sup>9</sup> According to part 2 of article 149 of the Ukrainian Criminal Code, vulnerable state of a person is understood as physical or mental state of a person or external circumstances of a person that take away or limit his or her ability to realize his or her actions (inaction) or control them, make independent decisions, resist violent or other actions, complex of grave personal, family or other circumstances.

<sup>10</sup> Decree of the Ukrainian Cabinet of Ministers of 18 January 2012 No. 29 “On national coordinator in the field of combat against human trafficking” is available at <http://zakon4.rada.gov.ua/laws/show/29-2012-%D0%BF>

<sup>11</sup> Decree of the Ukrainian Cabinet of Ministers of 15 February 2009 No. 90-r “On the Concept of State Target-Oriented Social Program of Combat against Human Trafficking until 2015” is available at <http://zakon2.rada.gov.ua/laws/show/90-2012-%D1%80#n8>

**The Policy of Combating  
Trafficking in Human Beings:  
The Ukrainian Context**

**EKATERYNA IVASCHENKO-STADNIK**

*Socio-Political Module*



The profile of Ukraine in the context of the issue of trafficking in human beings: the scale of the problem and the effectiveness of solutions. According to the IOM, Ukraine is currently at the top of the list of countries where the problem of human trafficking is most pressing (IOM rating is generated based on a number of victims who sought help from the organization. In 2010, 1,085 Ukrainian citizens sought such help; in 2011 – 835 citizens, and in 2012 – 945 citizens).<sup>1</sup> The problem became visible in the early 1990s (after the collapse of the USSR). During the 20 years subsequent to Ukrainian independence, it grew significantly: in general, according to the sociological data provided by the IOM in Ukraine, over 120,000 Ukrainian women, men and children were affected by this phenomenon from 1991 until the present day.<sup>2</sup>

Despite the apparent severity of the trafficking situation in Ukraine, according to the results of the research conducted with the support of the European Commission,<sup>3</sup> Ukraine was ranked only 87<sup>th</sup> in the world rankings of combating human trafficking.<sup>4</sup> The study developed an index of combating trafficking in human beings for the 182 countries, divided into three categories: 1) the punishment of perpetrators of trafficking, 2) the protection of victims of trafficking, and 3) the prevention of human trafficking. Overall, the policy of resisting was rated as more effective in the protection of victims and prevention of such crimes, but less effective as regards the prosecution of criminals. In Ukraine, the trends are different: Ukraine scored the maximum five points out of five in the category of prosecution of criminals,<sup>5</sup> while obtaining only three points in the last two categories – the protection of victims and the prevention of HT crimes. In 2012, the annual thematic report of the US Department of State defined Ukraine as a state that makes insufficient efforts to combat human trafficking.<sup>6</sup> In the context of the policy of crime prevention in this field, the authors of the report identified the most problematic cause of this situation: the Ukrainian government does not take sufficient steps to investigate, prosecute, and convict government officials complicit in human trafficking.<sup>7</sup>

The report also notes that while the Ukrainian Government did not provide any statistics on the prosecution of officials involved in crimes related to HT, non-governmental organizations regularly report cases of corruption, including noting the participation of prosecutors, judges and border guards

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<sup>1</sup> The number of appeals of victims to the IOM was steadily increasing in 2000s: from 42 appeals in 2000 up to 700—over a thousand in 2007-2010. *Combating trafficking in human beings: Ukraine* (Statistics last updated on 31 December 2012) // IOM: *Human trafficking closer than it appears*. Available at <http://en.stoptrafficking.org/view.statistics/>, date of access March 12, 2013.

<sup>2</sup> IOM: Украина стала лидером по уровню торговли людьми [Ukraine became a leader in human trafficking] // *Korrespondent*, February 17, 2013. Available at <http://pda.korrespondent.net/ukraine/events/1503421-ukraina-stala-liderom-po-urovnyu-torgovli-lyudmi-mom>, date of access March 10, 2013.

<sup>3</sup> The study was conducted by a team of research experts from the University of Göttingen, Heidelberg University and the London School of Economics.

<sup>4</sup> DW: Украина оказалась на 87 месте мирового рейтинга по борьбе с торговлей людьми [Ukraine is on the 87<sup>th</sup> place of the world ranking on combating trafficking in persons] // *Korrespondent*, February 22, 2012. Available at <http://pda.korrespondent.net/ukraine/events/1321948-ukraina-okazalas-na-87-meste-mirovogo-rejtinga-po-borbe-s-torgovlej-lyudmi-dw>, date of access March 12, 2013.

<sup>5</sup> The report states that during the year 2010, a significant number of Ukrainian smugglers of "live goods" were prosecuted and received various sentences. Thus, in 2010, 110 people were convicted, 60 of whom were sent to prison for terms from 1 year up to 15 years. The number of convictions for human trafficking in 2010 nearly twice exceeded the number of convictions in 2009 (see previous link). At the same time, the total number of criminal cases under the relevant article declined, partially due to the imperfections of law enforcement practices. For more see page 3 of the explanatory note.

<sup>6</sup> IOM: Украина стала лидером по уровню торговли людьми [Ukraine became a leader in human trafficking] // *Korrespondent*, 17 February 2013. Available at <http://pda.korrespondent.net/ukraine/events/1503421-ukraina-stala-liderom-po-urovnyu-torgovli-lyudmi-mom>, date of access March 10, 2013.

<sup>7</sup> *Trafficking in Persons Report 2012* / U.S. Department of State, Ukraine Country Report, pp.353-355. Available at <http://www.state.gov/documents/organization/192598.pdf>, date of access March 14, 2013.

in the process of establishing human trafficking schemes by obstructing the objective investigation and prosecution of such cases.<sup>8</sup>

*Country-specific forms and directions of trafficking and their impact on the formation of policy against trafficking.* In the case of Ukraine, the policy of combating trafficking in human beings must take into account the specificity of the role that the country plays in the chain of international trade in human beings, as Ukraine is – during the entire period studied – the country of origin and the country of transit, and – recently – the country of destination. This means that Ukraine is not only the exporter of "live goods" from among its own citizens, but is also used as a staging post for the transportation of foreign citizens onward across the Ukrainian territory. It is also a state where the exploitation of foreign citizens involved in human trafficking takes place. It is important to note that in recent years a growing number of Ukrainian citizens are being exploited on the territory of Ukraine without being exported abroad.<sup>9</sup> Although the main channel of trade is generated by Ukraine as a country of origin, the policy of combating trafficking in human beings should be comprehensive and take into account the growing threat of new forms of HT-commerce as well as ever-changing foreign policy and socio-economic conditions.

To effectively combat the problem, it is important to understand that human trafficking is not determined by purely economic hardships on the part of those citizens that become the object of trafficking. Human trafficking occurs in a situation of degradation of social and moral standards, an imperfect institutional framework and with high levels of corruption among the state institutions and bodies, which contributes to the smooth formation of both local and transnational criminal schemes to profit from the exploitation of "live goods."

Because of this, despite the fact that the coordinating body of the state policy in the field of human trafficking in Ukraine is the Ministry of Labour and Social Policy (this status is assigned to the Ministry by a Decree of the Cabinet of Ministers of Ukraine dated March 21, 2012), the implementation of targeted anti-trafficking programs involves the interaction of the agency with a number of other institutions, including the Ministry of Foreign Affairs, Ministry of Justice, the State Border Service, the Ministry of Youth and Sports, and the Ministry of Culture that supervise a broad range of diplomatic, legal, and cultural dimensions that determine the country-specific situation in this area. This work has just started, and the success of such inter-institutional cooperation is difficult to assess. It is already clear, however, that the effectiveness of the activity may be lessened by the complex problems inherent to the governmental agencies that are designated to participate in the target program against trafficking in human beings and that require fundamental restructuring. For example,

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<sup>8</sup> The report, for example, provides information about the intervention of regional state authorities into investigation and prosecution of trafficking cases in Volyn region. In particular, a member of the village council organized criminal circle that carried out trafficking of 20 women into Poland. In 2011, three border-guard officers extorted bribes from women who worked as prostitutes in Europe, were convicted and sentenced to 3.5 years in prison. However, at the time of publication of the report, these sentences were not carried out. – Ibid.

<sup>9</sup> According to the U.S. Department of State Report on Ukraine, the main target of traffickers is working age men and women, and children. The main purposes of human trade in the foreign markets are: forced labor, sexual exploitation and begging (the latter is mainly confined to the domestic market). Ukrainian citizens as victims of trafficking are exploited in the CIS countries (in Azerbaijan, Kazakhstan, Moldova, Russia and Turkmenistan) and in the far abroad (in Europe: Albania, Bosnia and Herzegovina, Cyprus, the Czech Republic, Hungary, Germany, Greece, Kosovo, Italy, Lithuania, Macedonia, Montenegro, Netherlands, Poland, Portugal, Serbia, Slovenia, Spain, Turkey; outside Europe: Bahrain, China, Egypt, India, Iraq, Israel, Lebanon, South Africa, Syria, the United Arab Emirates, and the U.S.). Ukraine is also a country of transit for trafficking of foreign citizens. In Ukraine, trafficking is not restricted to Ukrainian nationals, but also involves men, women and children from Cameroon, Moldova, Pakistan, Uzbekistan and other countries. The most common sectors of labor exploitation are construction, agriculture, manufacturing, domestic work, wood processing industry, nursing, commerce and street begging. Most trafficking dealers are part of small organized criminal networks, the vast majority of which is headed by Ukrainians and their foreign partners from Germany, Russia and Poland. For more see *Trafficking in Persons Report 2012* / U.S. Department of States, Ukraine Country Report, cc.353-355. Available at <http://www.state.gov/documents/organization/192598.pdf>, date of access March 14, 2013.

according to the International Women's Human Rights Center "La Strada - Ukraine", the tendency to reduce the number of criminal cases opened in Ukraine under the Article 149 of the Criminal Code "Human trafficking or other illegal transactions involving human beings" (in 2010, 337 cases were opened, and during the 6 months of 2011, 126 cases were opened) is not due to the actual improvement of the situation, but to the deterioration of work quality of the relevant bodies within the Ministry of the Interior, related to the protracted reorganization of the institution. The high level of governmental corruption in Ukraine, which is registered by both domestic and foreign observers, is a serious obstacle to the implementation of effective policies to combat human trafficking, not only in co-operation with domestic and international non-governmental organizations, but also in cooperation with the governments of other states.

*The evolution of governmental, international and non-governmental initiatives in the field of combating human trafficking in 1991-2013.* It should be noted that in Ukraine, as in many other post-Soviet states with traditionally high level of crimes related to human trafficking, the state started to make efforts to address this problem with a certain delay. Until 1998, when the article of the Criminal Code providing for penalties for trafficking was adopted, and the preparation of state anti-trafficking programs in cooperation with concrete ministries and departments began, the workload was carried out exclusively by international and non-governmental organizations (the latter also became actively involved only in the second half of 1990s). With the support of the OSCE, a system of "hot lines" was launched in several Ukrainian cities (Kharkiv, Lugansk, Odesa, Sevastopol and Ternopol), and special counseling centers for women were set up in Kyiv, Dnipropetrovsk, Donetsk and Lviv. In 1998, the International Organization for Migration initiated a broad information campaign. It also conducted the first Ukrainian large-scale sociological study of the problem, which focused on the motivation of Ukrainians for working abroad, as well as studying the demographic profile of women at potential risk. It analyzed the means of export of women abroad and their return to Ukraine.<sup>10</sup> Later, a special study on the level of awareness amongst the Ukrainian population regarding the phenomenon of human trafficking was conducted.<sup>11</sup> "La Strada"<sup>12</sup> can be considered the first non-governmental organization to combat human trafficking in Ukraine. Its activities, focused on combating the trafficking in women in Central and Eastern Europe, began in Ukraine in 1997.

Since the 2000s, this work has been more actively aided by the Ukrainian state, which for the past few years has not only been improving the legislation providing for more severe penalties for human trafficking and assisting the victims of trafficking, but has also been participating in international inter-governmental projects (in 2006, a program on Cooperation of the CIS member states to combat trafficking in human beings from 2007-2010 was adopted<sup>13</sup>; in 2010, Ukraine became party to the Council of Europe Convention on Action against Trafficking in Human Beings<sup>14</sup>). Also, it plays a more active role in the initiation of comprehensive state programs with the participation of

<sup>10</sup> Причини розповсюдження торгівлі жінками в Україні [The reasons for the spread of trafficking in women in Ukraine ] (2001) / *Предотвращение торговли людьми*, «Ла Страда», Киев-Харьков. Available at [http://www.pravo.vuzlib.org/book\\_z138\\_page\\_11.html](http://www.pravo.vuzlib.org/book_z138_page_11.html) , date of access March 9, 2013.

<sup>11</sup> *Короткий звіт з дослідження рівня обізнаності з явищем торгівлі людьми* (2011) [Short report on the survey on the level of awareness amongst the Ukrainian population regarding the phenomenon of human trafficking] / GfK для Програми протидії торгівлі людьми Представництва Міжнародної організації з міграції в Україні. Available at [http://iom.org.ua/ua/pdf/Summary\\_trafficking\\_GfK\\_final\\_UKR.pdf](http://iom.org.ua/ua/pdf/Summary_trafficking_GfK_final_UKR.pdf) , date of access March 10, 2013.

<sup>12</sup> See: <http://la-strada.org.ua/>

<sup>13</sup> *Решение о Программе сотрудничества государств-участников Содружества Независимых Государств в борьбе с торговлей людьми на 2007 - 2010 годы* [Resolution on the Programm of Cooperation of the CIS member states to combat trafficking in human beings for 2007-2010], Минск, 28 ноября 2006 года. Available at [http://zakon2.rada.gov.ua/laws/show/997\\_f05](http://zakon2.rada.gov.ua/laws/show/997_f05) , date of access March 9, 2013.

<sup>14</sup> *Конвенція Ради Європи про заходи щодо протидії торгівлі людьми* [Council of Europe Convention on Action against Trafficking in Human Beings] (Signed on May 15, 2005, signed on behalf of Ukraine on November 11, 2005). Available at [http://search.ligazakon.ua/1\\_doc2.nsf/link1/MU05384.html](http://search.ligazakon.ua/1_doc2.nsf/link1/MU05384.html), date of access March 10, 2013.

international and non-governmental organizations (in 2011, the Concept of the State Migration policy was adopted<sup>15</sup>, where anti-trafficking is defined as a strategic direction of the state migration policy; in 2012, the Concept of the state targeted social program to combat trafficking in human beings for 2013-2015 was adopted, indicating the objectives, the activities and funding – 7,393,184 thousand UAH for three years, including 2,996,616 UAH from the state budget, 1,514,833 UAH from local budgets and 2,881,735 UAH from other sources. That is, over 60% of the activities are intended to be paid from the state budget).<sup>16</sup>

However, according to the experts, the situation regarding the activities of the Ukrainian state in the field of combating trafficking in human beings can not be assessed unequivocally, as, in the case of present-day Ukraine (that is, during the tenure of the President Viktor Yanukovich), the risk of a formal approach to the implementation of symbolic gestures in the direction of increasing the visibility of international migration policies and standards (alone), and in particular, those dealing with the combating of human trafficking, is high. For example, despite the adoption of the Law of Ukraine "On Combating Trafficking in Human Beings" in the second half of 2011, up until March 2012 (the actual approval of the State target program for 2013-2015) integrated systemic work in this area was not carried out, the main executive actors were not identified, and no regulations existed in the field of implementation of the Law.<sup>17</sup> In addition, according to international observers, the Ukrainian government should take concrete steps in order to provide greater financial and organizational support to non-governmental organizations in the field of prevention of offenses related to human trafficking and the subsequent rehabilitation of the victims of the slave trade.<sup>18</sup> The expected intensification of cooperation between Ukraine and the EU after the Vilnius Summit of the Eastern Partnership in November 2013 – in the case of the signing of the Association Agreement – may help the Ukrainian authorities to take the implementation of the necessary policy steps in this area seriously.

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<sup>15</sup> *Про Концепцію міграційної політики України* [On the Concept of the State Migration policy of Ukraine ], 30.05.2011 Available at <http://zakon4.rada.gov.ua/laws/show/622/2011>, date of access March 5, 2013.

<sup>16</sup> *Державна цільова соціальна програма протидії торгівлі людьми на період до 2015 року*, затверджена постановою №350 Кабінету Міністрів України від 21 березня 2012 р. [State target program On Combating Trafficking in Human Beings approved by Decree of the Cabinet of Ministers of Ukraine on March 21, 2012 ]. Available at <http://zakon4.rada.gov.ua/laws/show/350-2012-п> , date of access March 12, 2013.

<sup>17</sup> Левченко К. (2012), Проблеми протидії торгівлі людьми в Україні [The problems related to combating Trafficking in Human Beings in Ukraine] / *Як Україна виконує план дій з візової лібералізації? Результати громадського моніторингу*, Міжнародний жіночий правозахисний cc.60-74. Available at [http://www.novisa.org.ua/upload/Full%20monitoring\\_UKR\\_60-74.pdf](http://www.novisa.org.ua/upload/Full%20monitoring_UKR_60-74.pdf) , date of access March 15, 2013.

<sup>18</sup> *Trafficking in Persons Report 2012* / U.S.Department of States, Ukraine Country Report, cc.353-355. Available at <http://www.state.gov/documents/organization/192598.pdf> , date of access March 14, 2013.



## **CHAPTER 7**

### **Emigration and Diaspora Policies**



**Emigration and Diaspora  
in Belarus**

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A number of new laws and acts were adopted in the field of migration after Belarus became independent. However, one can only talk about proper migration policy starting from 1998, when the 1998-2000 State Migration Program was adopted. One of its main achievements was implementation of the Law "On migrants" all over the country. The program for 2001-2005 that followed can be seen as fundamental for regularization of migration legislation and protection of migrants' rights. And only starting from 2006 a breakthrough started in Belarusian migration policy. Due to the growing natural decline of population, migration started to be regarded as a possible substitution. Migration management as part of the social policy became one of the main directions of Belarusian socio-economic development in 2006-2010. As a result migration policy is not limited to the 2006-2010 State Migration Program, but is also supported by subprogram "Optimization of Migration" of the 2006-2010 National Demographic Security Program.

Implementation of the former was entrusted to the Ministry of Interior of the Republic of Belarus. The program aimed to enhance efficiency of migration management, which was especially important in the context of drain of highly educated individuals, as well as young people from the country. Despite the fact that migration balance was generally positive in the course of 1990-2005, the loss of highly qualified individuals was compensated by low-qualified workforce. Moreover, emigration resulted in the loss of funds earlier invested into education and social protection of citizens (in Belarus every citizen has a right to free of charge secondary education, free of charge higher education in case of successful entry exams, and free of charge medical services). Concern was also caused by growing natural decline of population and low birth rate, which despite the currently high share of employable population (over 60%) will lead to the workforce shortage in the future. That is why the State Migration Program focused, on the one hand, on creation of conditions to reduce the emigration of research, engineering and creative personnel, as well as young professionals from Belarus, and on the other hand, on encouragement of temporary labor migration of Belarusian citizens to developed countries. The latter was considered as a means to improve qualification, stabilize domestic market, and increase investment into Belarusian economy.

The main task of the subprogram "Optimization of Migration" was also to create economic conditions for reduction of emigration and retaining of research, engineering, intellectual and creative potential of the country, as well as for stimulation of return labor flows. Implementation of the program was entrusted to the Ministry of Interior and Ministry of Labor and Social Protection.

Both programs were to a large extent implemented. However in terms of emigration they were basically reduced to the following main results. Owing to the measures under the State Migration Program, the study of potential, structure and main directions of external labor migration in Belarus was carried out. One should note the efficiency of the program with regards to improvement of migration statistics. As for the tasks of the subprogram "Optimization of Migration", to a large extent they were reduced to monitoring of migration processes. A crucial result of studies within the 2006-2010 State Migration Program and subprogram "Optimization of Migration" was a complex of measures to attract and bring back to Belarus highly qualified professionals and promising researchers who for a long time worked abroad under the labor contracts. These measures aimed at regulating external migration were taken within the 2011-2015 National Demographic Security Program. Monetary aid offered to those who move to Belarus can to a certain extent be seen as part of those measures. In 2011 each family entering Belarus received up to 1000 dollars from the government for adaptation and accommodation. These measures were aimed at increasing the incoming flow of migrants. According to the subprogram "Optimization of Migration" opportunities offered by diasporas and communities abroad and in Belarus will be used to attract immigrants and repatriates.

In May 1993 the state program "Belarusians in the World" was adopted. It aims to strengthen spiritual ties of Belarusian citizens with compatriots living abroad, and in July 1993 the first Congress of Belarusians of the World took place. It was the first and only instance in Belarusian history when Belarusians residing overseas got an opportunity to take part in determining the vectors of Belarusian statehood evolution. The government, in its turn, demonstrated its interest in development of ties with

Belarusian diasporas. However, in practice capabilities of diaspora were and are still underestimated. In total there have been 5 congresses of Belarusians in the world, the latest one was held in 2009.

In conclusion one can say that emigration policy, unlike policy with regards to immigration, still needs refinement. Policy with regards to emigrants, just as in case of diaspora, is still to large extent theory-, rather than practice-oriented. The same is not true for the current immigration policy. Unlike previous programs, the current one implies not only assistance in settlement of immigrants and their integration into Belarusian society, but also a differentiated approach to migrants' categories, based on national interests. This means that, first of all, one of the measures is to develop target-oriented regional programs, aimed at migrant influx to the geographic areas experiencing workforce deficit. Second, preference is given to persons under the age of 40 and having higher or secondary education. Besides, the Department of Citizenship and Migration of the Ministry of Interior identified countries from where migration is desirable: Ukraine, Russia, Baltic and CIS countries with Russian-speaking population, as well as undesirable donor countries: Africa and most of South East Asia<sup>1</sup>.

Overall, the objectives of 2011-2015 subprogram "Optimization of Migration" will be considered achieved, if the balance of external migration increases to 60 thousand over those five years. According to A. Begun, head of Department of Citizenship and Migration, Ministry of Interior, "economy itself, rather than authorities, should place a more precise order"<sup>2</sup>. Nevertheless, if the current demographic trends persist, the task of population stabilization will remain relevant for a long time. In this context positive balance of external migration can serve as compensating factor, and it can be ensured by increased immigration and preservation of national potential. As for the main task of emigration policy, namely reducing the drain of highly qualified and highly educated individuals from the country, its successful implementation to a large extent depends on implementation of measures under the Program of Socio-Economic Development of Belarus for 2011-2015, as far as this program aims to improve the well-being of citizens and increase the efficiency of country's economy.

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<sup>1</sup> <http://emigrant.name/novosti-immigracii/migracionnaya-programma-belarusi.html> Date of access: 13.03.2012

<sup>2</sup> <http://www.respublika.info/5317/society/article49211/> Date of access: 13.03.2012

**Moldova:  
Emigration and Diaspora**

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## **Abstract**

Moldova's newly gained independence has led to the population's full-scale migration. Due to a difficult socio-economic situation and low life standards, migration has become a common practice. It is of two types: permanent and temporary emigration (international labor migration). Approximately 1 million Moldovan citizens were included in emigration processes, which had a negative impact on the country's demographical safety and its socio-economic development.

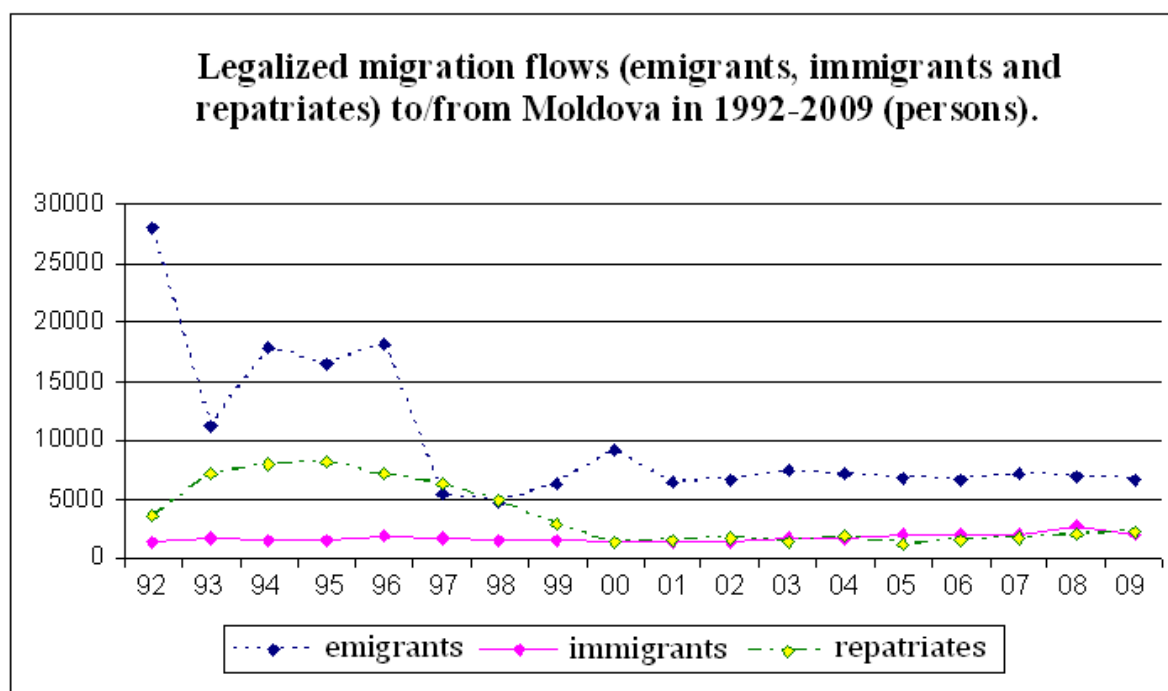
Moldova's authorities are concerned about this, yet, the solution to the problem is in the democratic context – a freedom to enter and leave the country according to the migrant's wishes. The migration policy is directed towards the regulation of migration processes; work with Moldovan Diasporas; development of policies that would stimulate the migrants' desire to return home; interacting with different international organizations; creating a visa-free regime between Moldova and the European Union. This article analyzes the work of Moldovan authorities in this field, in the last 5 years.

After declaring itself an independent democratic state, the Republic of Moldova undertook real steps to ensure democratic rights and liberties of its citizens. One of such rights was the freedom of movement, the right to exit and enter the country. This right was first declared in the Law “On migration” (1990). However, emigration was regarded only as temporary departure for work or studies. At the same time main emphasis was placed upon regulation of immigration processes.

The country’s Constitution (1994), a number of laws and legal acts defined the main approaches of Moldova to emigration, corresponding to international legal norms and democratic state principles.

According to official statistics, in the context of a profound social and economic crisis during the first years of independence, over 210 thousand people went abroad for permanent residence<sup>1</sup>. Compared to the beginning of 1990s, starting from the early XXI century the number of persons leaving for permanent residence stabilized at the level of 6-7 thousand people a year<sup>2</sup> (see Fig. 1). Nevertheless, this exceeds practically twice the aggregate annual influx of immigrants and homecomers to the Republic of Moldova<sup>3</sup>.

**Fig. 1. Legalized migration flows (emigrants, immigrants and repatriates) to/from Moldova in 1992-2009 (persons)**



At the same time mass process of international labor migration (temporary emigration) started from the second half of the 1990s. At present over 700 thousand people are involved in temporary labor migration, i.e. around 50% of the economically active population<sup>4</sup>. More than 240 thousand Moldovan

<sup>1</sup> Mosneaga V. Moldova in the context of international migrations. In: International Migration of population: Russia and contemporary world. International migration of population in the post-soviet territory: two decades of successes, mistakes and expectances. Volum 25. – Moscow, Moscow State University Press, 2011, p. 63

<sup>2</sup> Anuarul statistic al Republicii Moldova 2009. – Chisinau, Statistica Moldovei, 2010, p. 64

<sup>3</sup> Moraru V., Mosneaga V., Rusnyak G. Migration pendulum.- Chisinau, “Tipografia-Sirius”, 2012, p. 12

<sup>4</sup> Moldova after the global crisis: promoting competitiveness and shred growth”. April 4, 2011. World Bank. – Chisinau, 2011, p.14

citizens are legally staying (gained permission to stay and work in 2009) in the European Union (according to EUROSTAT)<sup>5</sup>. On the one hand, this leads to emergence of Moldovan diaspora in many countries of the world. On the other hand, this aggravates the problems of demographic security and supply of labor resources for the national market, and presents a threat to sustainable economic development of the country.

For a long time Moldovan authorities were not very concerned about emigration. Emigration reduced the acuteness of ethnic and later social confrontation within the country. With the growing labor migration multimillion financial transfers started to come to the country from migrants who helped the population and their own families survive. Thus, social conflicts and protests were absent. This situation satisfied Moldovan establishment.

Let us note that under the influence of international institutions and the European Union the attitude of Moldovan authorities and Moldovan political class to emigration started to change. Trying to minimize negative effects and risks associated with mass emigration, Moldovan government undertakes certain measures. It is noteworthy that during the first years of independence none of the governments and none of political parties supported the idea of abandoning the democratic principles of freedom of exit and entry, closing the borders and artificially restricting emigration.

Though Moldova has no conceptual / strategic document in the field of emigration (diaspora and repatriation), nevertheless there is (in addition to article 27 of the Constitution and five laws) a rather well-developed legal basis (1 Presidential decree, 7 regulations and 1 governmental instruction). These documents helped adopt Procedural Regulations of the Coordination Council for Diaspora Support (2005, starting from 2011 diaspora representatives are members of the Council); Procedural Regulations of financial support to preserve national and cultural identity of diaspora (2007); Action program of diaspora support (2006); National action plan of diaspora support (2008); National action plan to stimulate the return of Moldovan migrant workers (2008). Especially important is the Governmental regulation (2011) that formulated the decision to establish the Agency of Diaspora Affairs and develop Action plan for 2011-2014 to support Moldovan diaspora. This Plan ought to supplement the Action plan to introduce the National Strategy in the field of migration and asylum (2011-2020).

It is noteworthy that, despite the presence of serious contradictions between political forces in Moldova about the paths of country's social development, Moldovan migration policy carried out in the course of the last two decades is characterized by certain continuity, accumulation and use of conceptual and practical experience, both international and national. It covers a number of areas:

- ensuring the constitutional right of Moldovan citizens to freedom of movement, exit and return home. At the same time Moldovan authorities do care about the fate of the country. They are concerned about unregulated mass labor migration of Moldovan workforce abroad and negative consequences of this process. The Law "On migration" (2008) developed in accordance with the main international conventions of the International Labor Organization (ILO) regulates the activities of private employment agencies abroad and introduces certain restrictions on employment of Moldovan citizens. These restrictions are associated with property and family obligations, custody over children of migrant workers etc.

- interaction with Moldovan diaspora and ethno-cultural communities abroad. This process became more intensive from the first half of the 2000s. Starting from 2004 four congresses of Moldovan diaspora were carried out (once in two years). In 2005 Coordination Council for Diaspora Affairs was formed. Emerging Moldovan diaspora is regarded as a crucial instrument in development of mutually beneficial relations with other countries.

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<sup>5</sup> Moraru V., Mosneaga V., Rusnyak G. Migration pendulum.- Chisinau, "Tipografia-Sirius", 2012, p. 34

Creating conditions for small business development, authorities strive to attract Moldovan communities abroad, their financial capital and intellectual potential for modernization and socio-economic development of the country as a whole, as well as individual settlements, small business etc. Pilot program is carried out to attract financial transfers to the country's economy PARE 1+1 for 2010-2012, state program of small and medium business support (2009-2011). In order to do this, information campaigns are organized to teach the population to use bank services, rely on official channels for financial transfers, inform them about possibility of bank loans to start private business etc.

Starting from 2009 active efforts have been made to attract Moldovan diaspora to political life of the country. This resulted in growing political role and electoral activity of diaspora at 2010 parliamentary elections.

- work with Moldovan scientific diaspora. From 2010 projects have been carried out to attract researchers who had initially come from Moldova to develop the country's research and technology potential. Cooperation of Moldovan Academy of Sciences with the International Migration Organization and universities of the European Union member states is important in this context;
- stimulation of return of Moldovan migrants home and their reintegration. In 2008 the Government developed and is now implementing the action plan to stimulate the return of Moldovan labor migrants. The plan envisages complex measures to inform migrants about employment opportunities in the home country, repatriation procedures, founding their own business, expanding employment opportunities for young people, social protection etc. So far the effect of such actions is not large, which is associated primarily with socio-economic situation in the country.
- consideration of migration problems in the context of social policies of the country. The government strengthens complex, strategic and future-oriented approach to migration issues that are included in a number of national programs and strategies (Strategy in Workforce Employment Area (2007-2015), Strategy of Youth Affairs (2009-2013), Strategy in Migration and Asylum (2011-2020), Strategic program in demographic security (2011-2025), Action plan in the field of human rights (2011-2014), Plan of protection of children left without parental care (2010-2011) etc.).
- international cooperation in the field of mobility and return migration. The Republic of Moldova is one of the first countries (along with Cape Verde), with which the European Union signed an agreement on mobility and return migration (2008). Unfortunately, economic recession of 2008-2010 interrupted its implementation. However, activities continue in several areas. Thus, from 1 January 2012 financial incentives are provided to EU university alumni who came back and found employment in the home country.
- achievement of visa-free regime with the European Union member states. Moldovan authorities assume that existing visa regime is one of the obstacles on the path of migrants' return home. National program was developed and signed to implement the Republic of Moldova – European Union action plan in the field of visa regime liberalization (March 2011). Let us note that monitoring carried out by European institutions identified a number of significant positive changes related to border security, introduction of biometric passports in Moldova etc.

Moldovan Ministry of Information Technology is in charge of issues associated with emigration and departure for permanent residence abroad. Non-governmental organizations, both local and foreign ones, are involved along with national institutions. They are specialized in rendering intermediary services in emigration to Canada and other countries; in attracting and organizing temporary migration for Moldovan citizens, especially students. The Ministry of Labor, Social Protection and Family and National Agency of Workforce Employment are in charge of issues associated with temporary labor emigration.

Migration management identified the problems in coordination of activities of national institutions (management of various aspects of migration is entrusted to the Ministry of Interior, Ministry of Foreign Affairs and European Integration, National Bureau of Ethnic Relations, Ministry of Labor, Social Protection and Family etc.). In order to improve the quality of management, it was decided (in late 2011) to establish the Agency on Diaspora Affairs and Migration. Its competences and scope of authority are yet to be finalized.

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**State Policy on Emigration  
and Diasporas in Ukraine**

**ALISSA TOLSTOKOROVA**

*Socio-Political Module*



## Introduction

The dissolution of the socialist system in the early 1990s resulted in crucial quantitative and qualitative transformations in post-Soviet society. One of the determinants of the status of a person in a newly-shaped social hierarchy was individual mobility: social, economic, occupational, and geographical<sup>1</sup>. The propensity for economic mobility, in search of employment became an indispensable survival skill for millions of impoverished people<sup>2</sup>. Hence, an increasing transnationalism has been observable in society, accompanied by a growing wave of emigration. According to IOM<sup>3</sup>, in absolute numbers, the pull of Ukrainian nationals residing abroad approached 6 million, while BMP data<sup>4</sup> are even more impressive – 10 million.

## A brief history of the formulation of a migration policy framework

International organizations underscore that since state independence Ukraine has made tangible progress towards bringing its migration legislation and advocacy practice in line with international human rights standards<sup>5</sup>. It adopted modern migration legislation, created a State Migration Service, incorporated international agreements on human rights into its national legislature and developed international cooperation in the area of migration. Thus, the first attempts to provide a legislative framing to migration issues was made as early as 1991 (the year when Ukraine secured state independence) with the adoption of the Law On the Employment of the Population. Clause 10 of the Law was entitled “Citizens’ rights for professional activity abroad” and stipulated the right of Ukrainians to be involved in labour activity during stays abroad, as long as those activities did not contradict current Ukrainian legislation and the legislation of the host country. On the level of strategic state documents, migration was highlighted as a policy issue for the first time in 1997, after the adoption of the “Main directions of social policy for 1997 – 2000”. This document confirmed the status of the Ukraine as a labour exporting society and outlined the key directions of state migration policy. However, it did not provide any elaborations regarding the institutional framework for their implementation.

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<sup>1</sup> Tolstokorova, A. (2011). Ukrainian migratory corridor. Research Report. Case study for the Project “Improving EU and US Immigration Systems’ Capacity for Responding to Global Challenges: Learning from experiences”, European University Institute, Robert Schuman Centre for Advanced Studies, Migration Policy Center, co-financed by the European Commission, Directorate-General for External Relations. Online URL at: <http://cadmus.eui.eu/handle/1814/17842>

<sup>2</sup> Tolstokorova, A. (2010). Bitter Berries of Better Life: Socio-Demographic Costs of Labour Migration for the Ukrainian society, In: ENQUIRE Online Journal. Stories of Migration: Research, Theories and Everyday Lives. (Eds. Okyere, S., Madziva, R. Greener, J. and Brown, S.), 5<sup>th</sup> Edition. School of Sociology & Social Policy, University of Nottingham, UK. 2010, pp. 68-94 <http://www.nottingham.ac.uk/Sociology/Prospective/Postgraduate/ENQUIRE/ENQUIRE-Edition-5.aspx>

<sup>3</sup> IOM (2009). Migration in Ukraine: A Country Profile 2008. Geneva, p. 50.

<sup>4</sup> BMP (2011). Ukraine. Extended Migration Profile. Kyiv: Building Migration Partnership..

<sup>5</sup> Human Rights Watch (2005). Ukraine: On the Margins. Human Rights Watch. Volume 17, No. 8 (D). November 2005.; Council of Europe, ECRI (2008). Third Report on Ukraine. Strasbourg: European Commission against Racism and Intolerance. Adopted on June 2007.; ECRE (2009). Ukraine Country Report 2009: Situation for refugees and asylum seekers. European Council on Refugees and Exiles.; Amnesty International (2010). “Put deeds before words”: Deliver human rights for Ukraine. London..

## Challenges of emigration policy development in Ukraine and their underpinnings

Based on the recent expert evaluations,<sup>6</sup> Ukrainian state migration policy is “in the process of permanent formation”. It is not yet acknowledged as one of priority branches of Ukrainian public policy and for that matter it is fragmentary and contradictory in content terms. It is focused on immigration issues regarded mainly as restrictive principles aimed at illegal immigration into the country. Some of the fundamental components of state migration policy are either lacking or underdeveloped. Among them are policies towards emigration and the diaspora. Their principles, strategies and priorities as well as ways of implementation are still unidentified.<sup>7</sup> The state has shrugged off the responsibility for their regulation onto the shoulders of the civil society and the church which has neither the power nor the resources to tackle them at the right level.

## Issues of emigration in the framework of state policy on migration in Ukraine

### *Key principles and foci of state emigration policy*

At the same time, the state has made some important steps in the resolution of emigration issues, stemming from the principle of non-violation of state borders and the integrity of states in dealing with them. However, state policy in this area hinges primarily on providing aid and support to Ukrainian nationals living and working abroad. It does not involve aid and support for those who are leaving the country, especially if they are going for good. In particular, the key interest of the state is to attract foreign Ukrainians home in larger numbers, which putatively would, in turn, help boost the economy<sup>8</sup>.

### *State programs and projects on emigration issues*

With the goal of addressing emigration issues, two nation-wide projects were implemented by the state: the National Program “Ukrainian Diaspora” for 1996-2000, and the National Action Plan “Foreign Ukrainians” for 2001-2005. Both of them were geared to the requirements of Ukrainians who already lived abroad. They were mainly aimed at providing support to the development of relations with the diaspora, involving them in nation-building in Ukraine, encouraging the preservation of ethnic identity and cultural legacies. In 2004 the Cabinet of Ministers adopted “The Program on Safeguarding the Rights and Interests of Citizens Leaving for Employment Abroad and on Children Fostered by Foreigners till the year 2010”.

### *Legislative backing of state policy on emigration*

In terms of the legislative background for public policy on emigration and diaspora, the cornerstone was defined in 1994 when Parliament adopted the Law of Ukraine “On the Procedure of Entrance into Ukraine and Exit from Ukraine of Citizens of Ukraine”. The decade starting the New Millennium was especially productive for the development of this branch of public policy. In 2001, a new version of

<sup>6</sup> Малиновська, О.(2010). Міграційна політика України: Стан і перспективи розвитку. Аналітична доповідь. . [Migration policy in Ukraine. Situation and perspectives for development. Analytical report ]. Kyiv: National Institute for Strategic Studies; Documents security and migration policy: Assessments and recommendations of international working groups for Ukraine. (2011). Kyiv: Europe without barriers; Населення України. Трудова еміграція в Україні (2010). – К.: Ін-т демографії та соціальних досліджень ім. М.В.Птухи НАН України, с. 218.

<sup>7</sup> Діяльність держави з питань співпраці з українською діаспорою та питань організації IV Всесвітнього конгресу українців (2006) [State Policy for the Cooperation with Ukrainian diaspora and Issues of Organization of the 4th World Congress of Ukrainians// Україна: стратегічні пріоритети. Аналітичні оцінки [Ukraine: Strategic Priorities. Analytical Assessments. Kyiv: National Institute for Strategic Studies, с. 173-179.

<sup>8</sup> BMP (2011). Op. cit.

the law “On Ukrainian citizenship” was adopted. In December 2003, the Parliament passed the Law “On the Freedom of Movement and Free Choice of a Place of Residence in Ukraine”. This law applied both to Ukrainian citizens living abroad and to foreign nationals who were granted a residence permit in the country. In 2004 the Law “On Legal Status of International Ukrainians” was adopted, which provided the rights of immigration into Ukraine to ethnic Ukrainians beyond existing quotas.

#### *Role of Parliamentary hearings in the advancement of emigration policy*

In October 2009, for the first time since independence, the Ukrainian Parliament organized thematic parliamentary hearings focused on issues of Ukrainian citizens living abroad: “Foreign Ukrainians: Current Situations and Perspectives for Cooperation”. The hearings underscored that after obtaining state independence, Ukraine has consolidated itself as a centre for ethnic Ukrainians living abroad. This was reinforced by a government-approved foreign Ukrainian status, which was requested by and granted to over 4000 persons in 50 countries of the world. Another benchmark in the development of state emigration policy in Ukraine was the adoption in 2011 of “The Concept of State Migration Policy in Ukraine”. Among the priorities of the state in relation to issue of emigration and diaspora, this policy stipulated the goal of creating favorable conditions and mechanisms for the return of Ukrainian nationals permanently residing in other states. It also looked for the socio-economic investments of Ukrainian migrants and members of the Ukrainian diaspora in the national economy.

#### *The executive level of emigration policy realization*

An important contribution to the realization of state emigration policy in Ukraine was the creation of consultative-advisory centres by the Cabinet of Ministers. This aimed to work with issues of emigration and diaspora. Furthermore, Councils of organizations of international Ukrainians were established in the diplomatic institutions of over thirty countries to promote cooperation with Ukrainian emigrants. Centres for Ukrainian Culture and Information operate in 15 countries. At the local level relations with Ukrainian nationals residing abroad are also promoted. Thus, in 2007 a Transcarpatian regional municipality developed and adopted a Regional program for cooperation with Ukrainian nationals residing abroad for the period up till 2010.

### **Emigration policy and the diaspora nexus**

Is emigration policy shaped by the presence of a Ukrainian ethnic diaspora? The relations of the Ukrainian Diaspora with the homeland are complex and often emotionally charged. This was the conclusion of a seminar that brought together North American and Ukrainian experts on diaspora issues<sup>9</sup>. The seminar report provided an analysis of actual and possible patterns of influence exerted by the diasporas upon Ukraine at the national and sub-national levels. The key conclusion of the report was that education and culture represent the most promising directions where diasporas can promote Ukrainian nation-building.

### **Summary and conclusions**

The increasing pull of Ukrainians living and working abroad provides grounds for speaking about a growing “Ukrainian presence” in the world. This is a process which can bring tangible social, economic and humanitarian dividends to Ukraine, especially in terms of the promotion of its image and national interests in the global arena, should it be used properly by decision-makers and the civil

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<sup>9</sup> The first Petro Jacyk Memorial Symposium „Diaspora and Homeland in the Transnational Age: the Case of Ukraine”. Harvard Ukrainian Research Institute, 20-23 March, 2003. Online URL at: [http://www.brama.com/news/press/030522jacyksymposium\\_diaspora.html](http://www.brama.com/news/press/030522jacyksymposium_diaspora.html)

society. However, it is necessary, in the first place, to invest in the development of a viable strategy for cooperation with Ukrainians living and working in other countries and the enhancement of their role as a lobby for the Ukrainian state abroad. In the development of a policy towards foreign Ukrainians the state should rely on the principle that they are part and parcel of the Ukrainian nation. It is important to reconsider the key principles of domestic and foreign policy towards ethnic Ukrainians living abroad, to ensure that they are grounded on the principles of mutual understanding and joint benefit. The legal basis for this policy should be provided, accompanied by financial backing, informational framework, organisational and institutional infrastructure as a background for the implementation of practical programs of cooperation with “global Ukrainians”.

## **CHAPTER 8**

### **The Discourses on Migration**





**The Role of Migration  
in the Political System of Belarus**

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The pluralism of political parties emerged in Belarus in 1991. However, in the experts' opinion currently its proper functioning is in question. Thus, V.A. Bozhanov writes: "today in the political environment of Belarus we see a complete lack of political system, because we do not have any actual ruling parties, no Parliamentary groups" (Bozhanov, 2010, p. 164).

It has been observed that the number of political parties decreased significantly: from 40 in 1990 to 15 in 2012. As the number of parties decreased, so did their representation in the Parliament which is responsible for adopting the laws. In general there were 4 sessions of the two houses of Parliament convened in the work of the National Assembly of Belarus since 1996. Speaking of the House of Representatives which is in charge of considering and discussing the bills, most of the party representatives were there based on the results of the first convocation, formed of the Supreme Council: half of all the deputies were representatives of 9 political parties, including 24 members of agrarian party, 20 from the two Communist parties, 6 from several social-democratic parties. There were only 16 deputies affiliated with political parties in the second National Assembly, 12 in the third one, 7 in the fourth one (1 from the Belarusian Agrarian party, 6 from the Communist parties, the rest 103 of them were not affiliated with any parties). One may also note the lack of parliamentary groups in the 2nd-4th Assembly due to the small number of political party representatives.

The upper house is the Council of the Republic (64 members) which is a regionally represented house. Eight members of the Council of the Republic are elected from each region at the deputy sessions of local Councils. In their turn, as a result of the latest elections in the local councils of deputies in 2010 out of 21288 places 322 were occupied by the representatives of the parties supporting the President's policy (Agrarian Party, Belarusian Socialist Sporting Party, Communist Party of Belarus, Liberal-Democratic Party, Republican Party of Labor and Justice, Belarusian Patriotic Party, Republican Party), and 3 representatives of the opposition (2 from the Belarusian United Left Party "A Just World" and 1 from the Belarusian Social Democratic Party ("Gromada")).

Such a detailed description is important for the understanding of the fact that even if there is a certain statement with regards to the migration of the population in the parties' program, the proposals set forth by the parties were hardly ever discussed due to the low number of the parties' representatives.

Nevertheless it is important to note the Parliament's activity as a whole. For the 10 years over 30 bills on labor and employment were adopted, among which "Law on external labor migration", over 300 laws on ratification of the international agreements, as well as such important laws on human right protection of Belarusians abroad as Law on citizenship, Law on legal status of the foreign citizens and stateless persons etc.

Currently there are 15 active political parties in Belarus. All the parties, depending on their orientation, can be conditionally divided into five groups (Romanovskiy, 2009). The first group includes left-wing parties, which promote socialist values – social justice, welfare and decent labor conditions for the citizens, as well as free education and health care. These include: Agrarian Party, Communist Party of Belarus, Republican Party of Labor and Justice, Belarusian Patriotic Party, Belarusian United Left Party "A Just World" (former *Belarusian Communist Party*). The second group includes Social Democratic party ("Narodnaya Gramada"), Social Democratic Party People's Assembly, Belarusian Social Democratic Party "Gromada" which adhere to the socially oriented market economy. They opt for the combination of reforms and social protection of the population. The third one includes representatives of the Liberal Democratic Party and United Civic Party, the main values of which are free market relations and democracy. The fourth group includes two National Democratic Parties, Belarusian Popular Front Party and Conservative Christian Party - Belarusian Popular Front. According to the expert "division of the party into two independent organizations was caused by a sharp decrease of its authority in the public political life of the country, as well as contradictory views of the leaders on the processes in place in the society and in the party» (Romanovskiy, 2009). The fifth group includes the remaining 3 parties, Belarusian Party "The Greens"

and Belarusian Socialist Sporting Party, which have narrow spheres of interest and therefore do not have an important political impact in the society. The political party system of sovereign Belarus is formed in a complex way. One obstacle on the way to development is also a weak background of political programs. In the expert's opinion "program documents of many parties do not include a clear concept of political, social economic, and spiritual development, and are characterized by some eclectic ideological conclusions, having some vague, inconclusive ideas about the future of the society" (Romanovski, 2009).

Speaking of the migration issues, the focus is entirely on the fact that several parties indicate in their political programs adherence to human right protection, respect for cultural diversity, as well as private property for land. Thus, the Communist Party of Belarus promotes "equality of all the citizens of the country regardless of their ethnicity, language and religion, respect for culture, customs and traditions of every ethnical group" (Feduta et al, 2003, P. 102). Among the top priorities of the Republican Party are "natural voluntary revival of cultural uniqueness of the Belarusians and national minorities residing in Belarus" (Feduta et al, 2003, P. 105). This party also promotes "rigorous compliance with human rights in the Republic of Belarus" (Feduta et al, 2003, P. 104).

It is also worth mentioning some concern of political parties about the internal movements, in particular support of the rural areas. Thus Agrarian Party opts for "reforming "kolkhoz's" and "sovkhoz's" into market structures, and transmitting their assets into the shared collective property or private property of the workers; for private and public property for land which at the same time should not become an object for sale; for reinstatement of multilateral connections with Russia, Ukraine, and CIS countries, creation of favorable conditions for reunification of these countries into a single confederation" (Feduta et al, 2003, P. 89-90).

According to the political program of the Republican Party of Labor and Justice, land also should be transferred to those who work on it. Development of the agricultural sector is what Republican Party is generally promoting, too. Conservative Christian Party Belarusian Popular Front strives "to protect the Belarusian culture and language, priority of Belarusian language in the government and public life, the right of each national minority for its national and cultural autonomy, private property for means of production and land" (Feduta et al, 2003, P. 93). Through its political program Belarusian Popular Front strives to achieve "a fair land reform through recognition of the private property right for land and acknowledgement of land as a commodity" (Feduta et al, 2003, P. 95).

Poor representation of migration regulation issues in the political programs of the existent parties can be explained as follows.

Firstly, the Department of Citizenship and Migration at the Ministry of Internal Affairs of the Republic of Belarus is in charge of regulation of migration processes. As a matter of fact, the responsibilities of this department include an entire range of migration issues: migration statistics, control over migration situation, countering illegal migration, improving legislative acts, migration policy, informing the population about migration issues. Anything concerning changes or suggestions in any of the migration issues has to be coordinated with the Department.

Secondly, despite the fact that migration flows become more and more important in the social and economic development of the country, the issues of social security of the population, labor relations, wage increase are still relevant for a great part of the population. Therefore, those who draft the activity programs do not find it feasible to include migration in them.

Thirdly, even in the absence of the factors listed above, there were no significant changes in the migration situation and policy due to the specific nature of the electoral system in Belarus and weak participation of the political parties in the public life. (Feduta et al, 2003).

According to the experts "political parties in Belarus do not have a solid base, and moreover, the negative rating of some of them overrides the positive one" (Feduta et al, 2003, p. 28). This is why it is more convenient for the candidates to position themselves as not being affiliated with any political party.

On the other hand there are some problems with organization of activities inside the parties. Independent Institute of Social and Economic Research performed an opinion poll of the public leaders and experts in November 2001, and according to the results "the leaders claim that the most important reason for defeat of the opposition at the presidential elections was its internal problems. These include bad organization, lack of unity, confusion about the unique candidate, etc. The second most important reason is lack of outstanding leaders. And the third one is that the opposition is distant from the people, it does not benefit from the support of the Belarusian society, as it does not have an attractive political program" (Romanovskiy, 2007, p.188). The situation hardly changed over time. The results of public opinion poll in 2011 presented by the director of the Institute of Sociology by the National Academy of Sciences of Belarus Igor Kotlyarov, show that political parties have an extremely low rating among the population: - "In case of Parliamentary elections based on party lists in Belarus only 0.1 per cent of the population of the country stated they were ready to vote for certain parties<sup>1</sup>».

Another important factor slowing down the development of political parties in Belarus can be the fact that "today the parties are not represented at actual government authorities" (Romanovskiy, 2007, p.187). Executive power in the country is represented by the Council of Ministers of Belarus which is not elected but appointed by the supreme authorities.

Poor political culture suppresses the political development in the country. Currently there are few stable social groups recognizing their interests and able to protect them through political activity.

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<sup>1</sup> Belta// Accessed electronically:  
[http://www.vybory.ej.by/scandals/2011/11/29/politicheskie\\_partii\\_belarusi\\_ne\\_sposobny\\_reshat\\_problemy\\_obschestva.html](http://www.vybory.ej.by/scandals/2011/11/29/politicheskie_partii_belarusi_ne_sposobny_reshat_problemy_obschestva.html) Date of access: April 09, 2012.

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**Migration Issue in Programs  
and Platforms of Political  
Parties in Moldova**

**ALEX OPRUNENCO**

*Socio-Political Module*





## **Abstract**

Over the last decade the labour migration has become a defining feature of social, economic and political life in Moldova. Remittances sent by Moldovan migrants appeared critical in fueling country's consumption-based economic growth and driving thousands of Moldovan families out of poverty. On the flip side, Moldovan economy became dependent on these remittances, labour shortages became pronounced while social fabric came under serious stress. No less important, in the last years importance of Moldovan diaspora came to the fore: both as a source of electoral support and financial capital to support investment.

Despite the omnipresence of the phenomenon, political parties' platforms reflect these realities to limited extent. The former ruling Communists' party, ousted from power in 2009, has been reluctant to politically recognize critical role of migration in underpinning country's economic growth throughout period of its rule (2001-2009). This reluctance is striking against the backdrop of extensive cooperation between the Communist government and international organization aimed at putting in place nation system of migration management. The former opposition parties, now members of ruling coalition, have been eager to highlight the shortcomings of the remittance-driven economic growth during the period of Communist rule. However, on the programmatic level they essentially focused on the same issues as the Communist party did in practice during its rule: legalization of labour migration, attracting migrants and remittances back in Moldova in order to support investment-based economic growth and working closely with the EU in order to facilitate travel of Moldovan citizens to the EU. All in all, this should facilitate policy-making process on the migration issue.

The labour emigration is a lasting and a deeply embedded feature of Moldova's economic and social life. More and more present since the end of '90 as a response to rising poverty in the aftermath of protracted post-Communist transition and Russian financial turmoil of 1998 it has become a defining trait in the second half of 2000's. Indeed, by 2007 when migration seemingly reached its apex the remittances sent by Moldovan migrants were tantamount to one third of the country's GDP, around one quarter of labour force migrated abroad, while from 1999 to 2004 roughly 40% of population moved out of poverty (World Bank 2011). With all this benefits migration poses serious risks for development of the country, such as labour shortages, remittance-depending growth and 'Dutch' disease as well as family stress. At the same time Moldovan Diaspora abroad is often seen as source of capital and entrepreneurship to spur Moldova's development, as well as an important pool for votes. For instance, in the last parliamentary elections of 2010 Diaspora votes (65500 overall) added 2 mandates to ruling coalition and helped it to defeat the Communists' opposition. As both development and electoral impact of migration is set to grow it would be useful to see how stance of different parties on migration has evolved on programmatic level.

The political landscape has evolved a lot during last 20 years. It is enough to say that from all parties active in the 90's only one survived and has continued playing significant role in the last decade. Other current important parties were either established in the last 5 years or evolved so much that have little or no connection to their legal predecessors. This fact allows us to shorten timeframe for analysis.

In the nutshell, current Moldovan party system looks as follows:

Since 2009 Moldova has been governed by coalition government (based on four parties up to end of 2010 and three parties since then). The current ruling coalition set-up includes (from left to right): Democratic Party (DP, 15 mandates), Liberal Democratic Party (LDP, 31<sup>1</sup>), and Liberal Party (LP, 12). In Parliament there is only one opposition party, the Communists' Party. This party ruled Moldova from 2001 to 2009. The extra-parliamentary parties are many in number, but have very limited clout in the political discourse of the country. Therefore, it makes sense to focus on the parties represented in the Parliament.

Let us start tackling official party positions in reverse order. The *Communists' Party* came to power in 2001 amidst dire economic situation and in the aftermath of early elections stemming from political crisis. The ascension to power of the party coincided in time with the explosion of outwards migration from Moldova<sup>2</sup> that further on underpinned economic recovery in the country. Despite the fact that under the party's rule the labour emigration became a fully-fledged trend, there is little mentioning of this phenomenon in the party's document. The Program (PCRM 2008) mentions migration only once, while the latest electoral platform omits the issue altogether (PCRM 2010). This situation is surprising since in the years of the party's rule the migration management in Moldova evolved significantly. Furthermore, despite the fact that Party's rhetoric was somewhat negative towards labour emigration since it actually underscored the fact that economic recovery was jobless (former Prime-minister Vasile Tarlev even once declared migration a caprice, defying the fact that it were actually lack of jobs and huge wage gap between Moldova and destination countries driving Moldovan labour migrants abroad), on the ground significant job was done with the involvement of the international development community to laid fundament for the migration management framework (Mosneaga 2007). As opposite to rhetoric, the Communist government worked extensively on legalization of migration flows, bilateral cooperation with destination countries on facilitation of labour migration, improving institutional framework to manage migration flows both in and out of Moldova. These efforts were further supported by various cooperation initiatives between Moldova

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<sup>1</sup> One MP left Party later on.

<sup>2</sup> Ironically enough, the Party lost power against the backdrop of contraction of migration outflows and remittances' inflows in the aftermath of global financial crisis of 2008.

and the EU, underpinned by the Action Plan between both parties. Further in 2000's the emphasis was put on attracting Moldova migrants (or at least their money) back to fuel economic growth of the country. All in all, these efforts showed a tacit acknowledgement by the Communist government that labour emigration had a flip-side too.

Given the obvious predicaments of the consumption-led and jobless economic growth that development model became a centerpiece of the then-in-opposition parties' critique towards Communists' party. Little surprise then, their program documents reflect the migration issue to a larger extent. However, these party documents also show a large degree of convergence of the opposition "liberal" parties and incumbent Communists' party. The programs adopted by coalition party members both before and after 2009 underscore the following major goals (PLDM 2011, PDM 2010, LP 2010):

1. Free movement via visa liberalization with the EU (LDP, LP)
2. Legalization of migration and protection of labour migrants working abroad (LDP, DP, LP)
3. Attract migrants back to overcome 'brain drain' (LDP)
4. Attracting remittances as investments (DP)
5. Rural developments and/or overall job creation as a tool to make countryside more attractive place to live in and to return to (DP, LDP, LP)
6. Risks posed by migrants to the national pension system (DP)

To sum up, the approaches of coalition parties towards migration phenomenon do not appear very comprehensive on the programmatic level. However, they are quite similar and compatible. This should facilitate policy-making process on the migration issue. From programmatic perspective, there is little room for conflict between ruling coalition and opposition party on the migration issue as the programmatic goals focus on the migration-development nexus and legalization of Moldovan migrants abroad: need to legalize and protect migrants, facilitate liberalization of visa regime for travelling to the EU, attract migrants and their money back home for the sake of development, etc. The issues related to immigration are low or absent on the parties' agendas.

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**Migration Rhetoric in the  
Programs of Ukrainian  
Political Parties**

**ALISSA TOLSTOKOROVA**

*Socio-Political Module*



## Introduction

According to Ukrainian politicians, in Ukraine the topic of migration became relevant at the parliamentary level during the Orange revolution of 2004, as “in the course of voting it suddenly turned out that some citizens who are in the voting lists in fact do not reside in Ukraine. And society (some people with horror, some with surprise) found out that the country is short of several – in fact many – million citizens”<sup>1</sup>.

Indeed, migration policy issues are debated in the Ukrainian Parliament, as far as they have special significance from the standpoint of common national identity formation. At the same time these debates are to a large extent speculative and become active primarily during electoral campaigns, being used by politicians to mobilize their voters. In this context migrants become an object of manipulations and “political games” between parliamentary forces<sup>2</sup>. In general, as analysis shows, such important aspects of migration policy and management, as the rights of Ukrainian diaspora, influx of migrants and departure of Ukrainians, status of national minorities in Ukraine and labor migrants abroad, remain in the periphery of political parties’ interests and their parliamentary activities in the course of Ukrainian independence.

In theory, Ukrainian political parties represented in the Supreme Council (Verkhovna Rada) play a crucial role in formulation of state migration policy, as far as under article 92 of the Ukrainian Constitution the principles of regulation of demographic and migration processes, along with rights of indigenous peoples and national minorities, and combat against racial, national and religious intolerance, are defined by Ukrainian Law. That is why efficiency of migration management in Ukraine depends to a large extent on position of parties represented in the Parliament. However, in practice priorities and tasks of migration regulation and national minority rights reflected in party programs get a rather limited share of attention during day-to-day activities of parliamentary political forces. Moreover, quality of draft laws submitted to be considered by members of parliament on behalf of different political forces is rather low and they often ignore provisions of the current Constitution. Parties uniting into political blocs often disagree in their understanding of migration problems and migration policy principles. As a rule, issues associated with migration are presented not as important on their own account, but rather as one of components of “ethnonational policies”, along with problems of language policy and bilingualism, polyethnicity, status of national minorities and ethnic tolerance etc. For to these reasons, according to experts, Ukrainian migration policy is characterized by fragmentation and contradiction. The goal of constructing a civilized European state in Ukraine unites representatives of different political forces, giving them an opportunity to adopt necessary laws and join the important international agreements. However, rudimentary autarchic thinking along with objective economic and political difficulties, lack of experience and proper understanding of significance of migration issues, explain serious policy faults seen in practice<sup>3</sup>. Researchers see the reason for such situation in the fact that after the country gained independence, many political parties were formed not as institutions representing interests of society in the governmental bodies, but rather as a form of legitimation for certain elite groups (business, bureaucratic, political), giving them publicity and lobbying opportunities in the Supreme Council<sup>4</sup>.

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<sup>1</sup> The eighth forum of German-Ukrainian civil society “Kiev Dialogues: Migration as a European Challenges Based on Case Study of Ukraine”, 29 February 2012, Berlin. <http://www.ustream.tv/recorded/20779556> Accessed at: 10.44.

<sup>2</sup> Bilan, Y., Lapshyna, I. Vdovtsova, S., Vollmer, B. (2010). Justification of selection of regions. Eumagine project, Oxford: Centre on Migration, Policy and Society.

<sup>3</sup> Malinovska O. (2010). Migration policy of Ukraine: State and development prospects. Analytical report. Kiev: National Institute for Strategic Studies.

<sup>4</sup> Topalova S.O. (2006). Political parties as actors of state power in Ukraine // Relevant issues of public administration. Collection of research papers. – Kharkov, No. 2 (28), part 1. P. 148 – 156.

## Positions of political parties with regards to migration policy

The sixth convocation is the latest convocation of the Ukrainian Supreme Council (2007-2012). It is composed of the following parties: Party of Regions (175 seats), Bloc of Yulia Tymoshenko (156 seats), Our Ukraine (72 seats), Communist Party (27 seats), Lytvyn Bloc (20 seats).

### Party of Regions

On behalf of the party a draft law was submitted on introduction of changes into some Ukrainian legal acts on migration. This draft law aimed to establish proper legal foundations to strengthen the fight against illegal migration, improve migration management, and strengthen legal responsibility for violations in this field. However, this draft law was returned for revision. Member of parliament from this party Valery Konovalyuk and Vasily Gritsak initiated the study "State and Prospects of Migration Policy in Ukraine" aimed to evaluate the scale of the problem and develop the means to counteract negative consequences of increasing outflow of workforce from the country. The results of study carried out in April-May 2011 were announced by the working group comprising experts and journalists at the round table "Migration policy in Ukraine: Implementation Practice, Problems and Prospects".

**Yulia Tymoshenko Bloc.** Comprises all-Ukrainian Union "Fatherland", Ukrainian Social Democratic Party, and Reforms and Order Party.

Position of the bloc with regards to migration is evasive and speculative, placing an emphasis on the status of labor migrants primarily before elections, in order to win over voters. Bloc MPs submitted a draft law to the Verkhovna Rada to introduces changes to the Ukrainian law "On refugees" and improve the procedure of granting a refugee status in Ukraine. However this draft law was recalled.

**Our Ukraine – People's Self-Defense Bloc.** Unites nine parties: People's Union Our Ukraine, Forward, Ukraine!, People's Movement of Ukraine, Ukrainian People's Party, Ukrainian Republican Party Assembly ("Sobor"), European Party of Ukraine, Christian Democratic Union, Civil Party "Pora", and Motherland Defenders Party.

Almost all Bloc parties pay attention to national minorities. In the program of People's Union Our Ukraine it is noted that that the government ought to take care of development of national cultures, religions, spirituality of each citizen and the whole society. The program emphasizes: "Social dialogue and compromise ought to replace political speculations and enmity among people. Ukraine will be the place of peaceful coordination of interests, dissemination of tolerance and mutual understanding in the world, rather than a zone of clash between global centers of influence".

People's Movement of Ukraine (Narodny Rukh) also stands for the right of national minorities to study their language, create cultural and educational societies and communities, theaters and concerts groups, arrange publications in their own language, and cherish national and cultural traditions. The movement stands for harmonization of international relations, taking into account the interests of both ethnic majority and national minorities, as well as elimination of factors contributing to ethnic tension and conflicts.

**Lytvyn Bloc.** Consists of two political parties: People's Party and Labor Party.

Experts consider Lytvyn Bloc as one of political forces that does in fact pay attention to migration processes, though its attention is primarily declaratory and it does not offer any specific steps or efficient measures for migration management. People's Party focuses on the problem of consequences of illegal migration to Ukraine, underlining in its program that the government in its migration policy must primarily defend the interests of Ukrainian citizens and prevent illegal entry of citizens of other states. At the same time it is emphasized that when applying immigration quota the government ought to be guided not only by threats associated with mass immigration, but also by the urgent challenges it



faces. Bloc MPs submitted a draft law on introducing changes to the Ukrainian law “On immigration” (to remove immigration quotas for certain categories) and co-authored the draft law “On foundations of state migration policy of Ukraine” (2008).



**Public Debate on the Law  
on Refugees in Ukraine**

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*Socio-Political Module*



## **Abstract**

On July 2011 the National Parliament of Ukraine adopted the Law of Ukraine “On refugees and persons who need complementary or temporary protection”. Its adoption was an important step forward in terms of bringing the national legislation in compliance with international standards and regulations. Thus, it has taken into consideration the provisions of the Convention on refugees’ status of 1951, Protocol on the Status of Refugees of 1967, and strategic documents on migration issues adopted by the Council of Europe and the European Union. Furthermore, it introduced a cluster of significant innovations regulating the procedure of allocating the legal status to foreign nationals and persons with no citizenship and enabled a better protection of rights of refugees and asylum seekers. However, the expert community expressed concerns regarding a number of shortcomings in the Law. Thus, one of the most challenging issues was the actual possibilities for the practical implementation of the Law. The paper outlines the public debate on the Law which exposed a diversity of opinions by both supporters and opposers to the Law. The general conclusion is that the Law is an important step of the state on the way to quality reformation of the current Ukrainian legislation in the area of immigration, which will draw it in compliance with international standards and norms and enhance democratic developments in the society.

On July, 20, 2011 the National Parliament (Verkhovna Rada) of Ukraine has adopted in the second reading the Law of Ukraine “On refugees and persons who need complementary or temporary protection”. The Law, designed by the Ministry of Justice, was signed up by the President of Ukraine on July 28 and came into force on August 4, 2011.

The adoption of the Law was an important step forward in terms of bringing the national legislation in compliance with international standards and regulations. It has taken into consideration the provisions of the Convention on refugees’ status of 1951, Protocol on the Status of Refugees of 1967, and strategic documents on migration issues adopted by the Council of Europe and the European Union. Furthermore, it introduced a cluster of significant innovations regulating the procedure of allocating the legal status to foreign nationals and persons with no citizenship and enabled a better protection of rights of refugees and asylum seekers.

One of the key innovations in the Law is the extended checklist of criteria for granting official refugee status by Ukrainian authorities. Another progressive development in the current edition of the Law, which differs it from the earlier version as of 2005, is that it allows a person to be recognized not only as a refugee, but also as one requiring complementary protection. The latter provision of the Law, which expands the category of those requiring protection, was highlighted as its main breakthrough by the team of international and local experts at “No borders” project<sup>1</sup>. Furthermore, the Law outlines the legal status of refugees and individuals in need of complementary protection as well as those who have been granted temporary protection in Ukraine and specifies the conditions for the loss and deprivation of such a status.

According to experts of the “Rokada Charitable Foundation”, alongside with this, there are several other social advantages. Most important is the simplified procedure for securing opportunities for legal employment, which promotes better integration of refugees<sup>2</sup>.

Representatives of the State Migration Service in Ukraine contend that the Law was aimed to harmonize the Ukrainian legislation with the European norms and practices. The advantage of the new Law, they argue, is in the introduction of a standard ID for asylum seekers, which enables the documentation of the latter throughout the whole duration of the application process<sup>3</sup>.

Experts of the Chernihiv Civic Committee for Human Rights underlined the importance of the newly introduced regulations of the Law regarding reunification of immigrant families, which also matters in terms of the protection of the rights of the child in such families<sup>4</sup>.

It was emphasized that the key among the new achievements of the Law is the introduction of “complimentary mechanisms” for the protection of asylum seekers which apply to the category of persons, not covered by the UN Convention of 1951 as persons who have grounds to secure the status of refugees. This will enable a tangible perfection in the functioning of both the state institutions and grass-

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<sup>1</sup> No Borders” project (“Social Action” Centre NGO) comments the Law of Ukraine “On refugees and persons who need a complementary or temporary protection, adopted by the Verkhovna Rada of Ukraine on July 8, 2011. <http://noborders.org.ua/sfery-dijalnosti/bizhenci-ta-shukachi-prytluku/komentari-vid-proektu-bez-kordoniv-tsentru-sotsialna-diya-do-uhvalennya-verhovnoyu-radoyu-zakonu-pro-bizhentsiv-ta-osib-yaki-potrebuyut-dodatkovoho-abo-tymchasovoho-zahystu-8-lypnya-2011-r/> [Stand 13-07-2011].

<sup>2</sup> Stadnyk, H. Will the new law make life easier for refugees? Website of the Ukrainian Helsinki Human Rights Union. <http://www.helsinki.org.ua/en/index.php?id=1313655354> [Stand 18.08.2011].

<sup>3</sup> Borzhavsky, I. В Ужгороді обговорили новий закон про біженців [In Uzhgorod they discussed the new Refugees Law]. Голос Карпат [Voice of Carpathians]. <http://goloskarpat.info/Novini-Zakarpattya/V-Uzhgorodi-obgovorili-noviy-zakon-pro-bizhentsiv?print=1&tmpl=component> [Stand 20.08.2011].

<sup>4</sup> Edieva, N. Чого очікувати від нового закону про біженців? [What should be expected from the Refugees Law?] Портал «Громадський простір» [Civic Space Portal] <http://www.civicua.org/text/news/view.html?q=1664125> [Stand 04.08.2011].

roots organizations in Ukraine. Meanwhile, international human rights organizations have voiced their concerns with regard to the content of the above regulation of the Law. Thus, the UNHCR in its press release on the adoption of the Law noted that the definition of “complimentary protection” is tangibly lower than is prescribed by the EU standards. In particular, the Law of Ukraine does not stipulate the provision of complimentary protection to persons who are experiencing life threats in conditions of arms conflicts. UNHCR is concerned in earnest about persons requiring international protection and especially those who while escaping arms conflicts will not be able to find protection in Ukraine<sup>5</sup>.

Alongside with that, the expert community expressed concerns regarding the actual possibilities for the practical implementation of the Law. It was noted that while newly introduced legal norms are important, a Law alone is insufficient to improve everyday lives of refugees and asylum seekers. For the Law to be efficient a whole specter of conditions is required, the key among them being the orderly functioning of the judiciary. As noted by the above “Rokada” expert, asylum seekers, having had their application turned down, often appeal against the decision to the court. However, due to the judicial changes the country has lost many judges who were qualified and knowledgeable in this area. For that matter asylum seekers often wait years for a decision.

Not less important for the efficacy of the Law will be the introduction of guidelines for practical implementation and the development of complimentary clauses to the Law by the State Migration Service, in addition to a respective department to be created within its structure.

Last but not least, the Law does not guarantee either the protection from ill-treatment to asylum seekers, or the protection to persons whose applications had been rejected, while the procedure for forced deportation is specified in very narrow terms.

Overall, all the experts agreed that although the Law was the first, yet hopefully not the only step of the state on the way to quality reformation of the current Ukrainian legislation in the area of immigration. It is expected that the new Law will bring it in compliance with international and European standards and norms, given that efficient regulation of migratory fluxes is a prerequisite for the democratic development of the society

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<sup>5</sup> Taken from Edieva, N.





## **CHAPTER 9**

**Asylum seekers, refugees and IDPs:  
recognition, social protection and integration**



**Forced Migration  
in Belarus**

**LIUDMILA SHAKHOTSKA  
ANASTACIA BOBROVA**

*Demographic and Economic Module*



## **Belarusians as forced migrants**

There is limited information on the number of forced migrants from Belarus. Key information can be found in the statistical publications of the United Nations Office of the High Commissioner for Refugees (UNHCR). Belarusian office of this organization gives the following explanation: “countries are guided by the principle of confidentiality of information submitted by an applicant. Public bodies of the asylum country have no right to transfer or provide any personal information about an application to his/her state of citizenship” (*Delovaya Gazeta*, 2013). According to UNHCR, the total number of persons from Belarus applying for refugee status, asylum or complementary protection was 6839 in 2011 and 6194 in 2012 (UNHCR, 2012; UNHCR, 2013). European countries (the Netherlands, Sweden, and Switzerland) and the USA were their countries of preference.

Some estimates are available at the websites of Eurostat and US National Security Agency. According to the data for 1998-2007, 16255 citizens of Belarus sought asylum in EU member states (Eurostat Statistics). The main recipient countries were Germany, the United Kingdom, Sweden, France, the Czech Republic and Austria. The US National Security Agency also posts data on Belarusian refugees who arrived in the US territory. According to its estimates, there were 2844 of them 2003-2012 (Department of Homeland Security: 2012).

## **Forced migrants in Belarus**

In Belarus the procedure for granting refugee status has been in place since 1997. Today there is an efficient system for granting asylum, complementary protection and refugee status that meets international standards in the field of forced migration. In Belarus forced migration is defined as movements of persons from the state of citizenship or previous customary place of residence due to: the fear of persecution because of race, faith, citizenship, nationality, membership in a social group or political beliefs; or due to the threat of death penalty, torture and other cruel, inhuman or degrading treatment or punishment; or movements as a result of violence in the course of international or national armed conflict (Law, 2008). Even though Belarus only joined the 1951 Convention relating to the Status of Refugees in 2001, experience accumulated earlier and adopted normative acts allowed for a prompt amendment of the Law “On Refugees” of 1998 and the adoption of the Law “On Granting Refugee Status, Complementary and Temporary Protection to Foreign Citizens and Stateless Persons in the Republic of Belarus”. This law complies with the 1951 Convention and entered into force in July 2009. For instance, the period for examination of foreigners’ applications was reduced by two weeks and is now equal to one month. In addition to that, a foreigner has an opportunity to obtain complementary protection, until he/she is granted refugee status, which gives him/her a right to a number of social guarantees. This includes the right to legal employment in Belarus.

All aspects of asylum procedure in Belarus are regulated by the Regulation on Granting Asylum to Foreign Citizens and Stateless Persons in the Republic of Belarus and Loss and Revocation Thereof adopted in 2006. According to that document, asylum “can be granted to foreigners present in the territory of the Republic of Belarus who were forced to leave the state of citizenship or state of previous customary place of residence due to their persecution for political, religious beliefs or nationality” (Decree, 2006).

Over 15 years, from 1997 to 2012, refugee status was granted to 854 foreign nationals, or one fifth of all applications in 1997-2012. Applicants came from over 40 countries, but the status was granted to citizens of only 15 countries. 70% of persons granted refugee status in Belarus were citizens of Afghanistan. Other countries whose citizens were granted refugee status more often than others were Georgia, Azerbaijan, Tajikistan, Ethiopia and Iran. The main influx of migrants who applied for refugee status came in 1997-2003 (table 1). Subsequently (in 2004-2012) the number of applications became three times smaller and was equal to 1030 with 135 petitions granted.

One should note that along with applications from citizens of countries where armed conflicts took place or where they are currently taking place (Pakistan, Iraq, Syria) there is also a growing number of applications from the third-world countries. Furthermore, 40 citizens of Ukraine and 31 citizens of Russia applied for refugee status in 2004-2012. The situation with Russia is especially ambiguous, as it is unclear why those who have practically the same rights as Belarusians and access to facilitated citizenship acquisition procedure would ask for refugee status. Probably they are not native Russians. But it is impossible to find out for sure.

**Table 1. Number of foreigners who were granted refugee status in Belarus, 1997-2012**

Country	Refugee status granted		Applied in 2004-2012	Refugee status granted
	1997-2003	2004-2012		Total for 1997-2012
Azerbaijan	27	2	26	29
Armenia	1		12	1
Afghanistan	521	78	513	599
Georgia	99	37	155	136
India	2		2	2
Iraq	1	1	26	2
Iran	5	7	28	12
Cameroon	1		2	1
Liberia	1		1	1
Libya		1	1	1
Pakistan		5	28	5
Palestine	9		5	9
Rwanda	1			1
Tajikistan	28	4	14	32
Ethiopia	23		10	23
<b>Total</b>	<b>719</b>	<b>135</b>	<b>1030</b>	<b>854</b>

Source: Ministry of Interior of the Republic of Belarus

At the legislative level the rights of acknowledged refugees are to a large extent equal to the rights of foreign nationals permanently residing in Belarus. They have access to healthcare and educational institutions, the right to judicial protection, the right to employment or unemployment benefits, the right to social and retirement benefits, and they also have some special rights, such as, for instance, the right to financial assistance, assistance in getting housing and registration. Refugees have a right to the citizenship of the Republic of Belarus, if they meet all the formal requirements (seven years of living with refugee status, knowledge of the state language, available source of income, absence of other state's citizenship), which they actively use in practice.

Complementary protection is granted to the most vulnerable categories of refugees, namely children.

Office of UNHCR in Belarus, Belarusian Red Cross and other non-governmental organizations render both social and material support on a regular basis.

The Belarusian Ministry of Interior, as a regulating body in the field of refugee affairs, emphasizes the role of the UNHCR office in rendering assistance to refugees and asylum-seekers and funding support projects (Matus, Tumashik, 2007). Funding of such projects is especially important in the context of the limited resources allocated from the state budget.

Nevertheless, there is a pressing issue: drafting legislation that would list measures aimed at stimulating the integration of migrants in general and refugees in particular. According to UNHCR programme officer Tatiana Selivanova, “among problems that acknowledged refugees face most often one can primarily mention issues associated with employment, housing and language learning. They are the key obstacles for efficient integration and adaptation of acknowledged refugees in Belarus” (Tumashik, 2009). At the same time some problems can be quickly resolved with minimal costs. Experts note the “unwillingness of refugees to show initiative in resolving integration problems”. Studies show that even when they have the necessary qualifications and high levels of education, they prefer to work at the markets, though “there are those who work at enterprises, collective farms, different organizations, are registered as individual entrepreneurs” (Matus, Tumashik, 2007).

There are sufficiently favorable conditions for the social integration of refugees in Belarus. An example of assistance in the integration of refugees in Belarus is Integration A, the foundation located in the city of Gomel that supports forced migrants and offers Russian language courses that everyone can attend. Another example is the anti-crisis division “Facility for temporary accommodation, psychological and social adaptation of refugees”. Women and children are supported by the Children and Youth Creativity Center “Eureka”, where arts and sports training and events are held for refugees.

Therefore, one can list the following main policy priorities in the field of forced migration in Belarus at this stage:

- development of national plans for the integration of refugees;
- assessment of the national asylum system prospects within the Common Economic Space;
- enhancement of efforts undertaken by local public agencies when working with refugees.

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**Access of Refugees and Asylum  
Seekers to Socio-Economic  
Rights in the Republic of Belarus**

**OLEG BAKHUR**

*Legal Module*



In 2001 the Republic of Belarus acceded to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees. Belarusian legislation currently in force<sup>1</sup> was brought into full compliance with generally recognized requirements in the field of protection of refugees' rights and freedoms stipulated in those international acts.

The rights of foreigners applying for protection are regulated by article 29 of the Law No. 354-Z. These persons were given an opportunity to settle on their own or reside in temporary accommodation facilities; they enjoy access to emergency medical care, right to apply to the Office of the United Nations High Commissioner for Refugees and right to withdraw the petition etc. Rights of these persons are equal to rights of foreigners temporarily residing in the Republic of Belarus.

Under the 2008 Belarusian law No. 354-Z, socio-economic rights of refugees<sup>2</sup> are equal to those of Belarusian citizens.

Rights of this category can be classified as follows<sup>3</sup>:

1. rights in the information field: receiving information about their rights and obligations; assistance of the Citizenship and Migration Department of the Belarusian Ministry of Interior in obtaining information about close relatives residing in the state of citizenship or previous residence;
2. freedom of movement: right to reside in the territory of Belarus for the period of being acknowledged as a refugee<sup>4</sup> (with subsequent obtaining of permit for permanent residence in Belarus<sup>5</sup>), independent choice of settlement for residence, independent settlement in the family of a Belarusian citizen's family or a foreigner permanently residing in Belarus, right to reside at a temporary accommodation facility<sup>6</sup>; right to voluntary return to the state of citizenship or previous residence, departure for permanent residence in a different state;
3. social support: social protection, including social security on a par with Belarusian citizens, one-time and supplementary<sup>7</sup> monetary assistance<sup>8</sup>;
4. family relations: right to family reunification, marriage, divorce;
5. medicine and healthcare: free-of-charge access to the national healthcare system;
6. education: free-of-charge access to the national education system, children of refugees have an opportunity to attend preschools;

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<sup>1</sup>Primarily article 12 of the 1994 Constitution which envisages the possibility of granting asylum in Belarus to persons persecuted in other states for political and religious beliefs or nationality; As well as the Law of Belarus of 23.06.2008 No. 354-Z (version of 03.07.2011) "On granting refugee status, supplementary and temporary protection in the Republic of Belarus to foreign citizens and stateless persons" // National Registry of Legal Acts of the Republic of Belarus.- 02.07.2008.-No. 158, 2/1451.

<sup>2</sup> As well as foreigners who were granted supplementary protection

<sup>3</sup> Article 19 of the Law No. 354-Z

<sup>4</sup> Supplementary protection

<sup>5</sup> Refugees (as well as persons permanently residing in Belarus) depart from Belarus using their national (civil) passport; if they do not have one they are issued a Belarusian travel document that gives right to enter and depart from Belarus and proves one's identity for the purposes of entry to and departure from the Republic of Belarus

<sup>6</sup> If independent settlement is impossible

<sup>7</sup> Par. 1 of the Regulation of the Belarusian Cabinet of Ministers of 14.04.2009 No. 461 "Issues of granting refugee status, supplementary and temporary protection in the Republic of Belarus to foreign citizens and stateless persons"

<sup>8</sup> One-time monetary allowance equal to one base line value is provided; as of today it is equal to 100 thousand Belarusian roubles or 11 U.S. dollars; size of additional monetary allowance is not determined, it is the foreigner who indicates the sum in his/her application for allowance (it can be granted to pay for travelling around Belarus, accommodation at a temporary accommodation facility or temporary housing, meals, clothes).

7. labor and property relations: right to work for hire, right to entrepreneurship, acquisition of movable property or real estate;
8. protection of rights and freedoms, safety: right to apply to Office of the United Nations High Commissioner for Refugees and judicial protection on a par with Belarusian citizens, non-refoulment of these persons is guaranteed (article 5 of the law No. 354-Z)<sup>9</sup>;
9. access to citizenship: persons who were granted refugee status can be naturalized seven years after obtaining this status;

Under valid legislation, this category of persons has a number of obligations and rights limitations:

1. in the legal field: obligation to comply with the Belarusian Constitution and other Belarusian legal acts, to respect national traditions of the Belarusian nation;
2. accommodation procedure: the need to get registered at the citizenship and migration division in the place of residence or temporary residence in Belarus, notify within seven days the citizenship and migration division about change of last name, first name, patronymic, family composition, marital status, acquisition of another state's citizenship;
3. freedom of movement: inform the citizenship and migration division about intention to depart for permanent residence outside Belarus; get registered at the citizenship and migration division when changing residence or temporary residence in Belarus.

The second category is called “persons applying for supplementary protection”: foreigners or stateless persons present in the territory of Belarus who have no grounds for being granted refugee status, but have justified fear of facing upon return to the country of citizenship the threat of death penalty, torture and other cruel, inhuman or degrading treatment and punishment or threat to life that emerged due to violence during an international or non-international armed conflict and who cannot or do not want to return to the state of previous residence (citizenship) due to such fear.

There is only one key difference in the scope of rights and obligations compared to refugees: supplementary protection is granted only for one year with a possibility of extending it for the same period if the above-mentioned grounds are still present, and this person can obtain a permanent residence permit only after seven years of staying in the country. All other rights are absolutely equal.

The Citizenship and Migration Department of the Belarusian Ministry of Interior is a central government body of Belarus in charge of resolving all issues related to forced migration, including ensuring the rights of refugees<sup>10</sup>.

It is important to note that in Belarus, in addition to government bodies, work in the field of reception and accommodation of refugees and asylum seekers and their subsequent integration is efficiently carried out by offices of some international organizations, as well as certain non-governmental organizations (e.g., office of UNHCR in Belarus)<sup>11</sup>.

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<sup>9</sup>Exception from the ‘non-refoulment’ principle is stipulated for foreigners who pose a threat to Belarusian national security or committed a crime in Belarus that is classified as a grave crime or felony by the Belarusian Criminal Code

<sup>10</sup>Accepting foreigners’ petitions for being acknowledged as refugees, considering these petitions and making decisions, exercising control over forced migrants staying in the Belarusian territory and their registration, explaining foreigners’ rights and obligations to them, assisting in settlement, employment and offering other assistance

<sup>11</sup>UNHCR provides financial and organizational support in granting legal, social, medical and material assistance to the most vulnerable and distressed persons among asylum seekers and in integration of refugees into the Belarusian society; IOM office in Belarus has successfully implemented a program of voluntary repatriation of migrants (illegal migrants and persons who were denied refugee status and supplementary protection) to their home country; Refugee consulting service based at the non-governmental association Belarusian Movement of Medical Personnel offers free-of-charge assistance to refugees and asylum seekers when they undergo procedure of refugee status identification, as well as during refugees’ integration into the Belarusian society; Belarusian Red Cross Society provides assistance to the most vulnerable categories of refugees and asylum seekers

Persons who were granted refugee status in Belarus can face the problem of continuing education received in the country of previous permanent residence or recognition of their profession or qualification, if they do not have corresponding documents and it is impossible to recover them.

As for preschool and secondary education institutions, there are no problems with enrolment of these persons there. Let us examine enrolment into higher and secondary specialized educational institutions in greater detail. Under decree of the Belarusian President of 07.02.2006 No.80<sup>12</sup>, persons with general secondary, vocational education or secondary specialized education confirmed by an education certificate can enter universities<sup>13</sup>. Persons with basic general education, general secondary education or vocational education confirmed by a corresponding education certificate can enter secondary specialized educational institutions (secondary specialized colleges)<sup>14</sup>. Mechanism for proof of education for such persons has not been developed and is not envisaged by normative legal acts. These persons can apply to the education division of the executive committee requesting a permission to pass the exams for the whole secondary school course without attending classes, after which they get a corresponding document.

As for employment of this category of persons, there are some difficulties. Under part 2 of article 26 of the Labor Code, employment without documents indicated in part 1 of that article is not allowed in Belarus<sup>15</sup> (for instance, a document proving foreigner's identity, labor record, professional training certificate confirming the right to carry out a particular job etc.). The mechanism for confirmation of knowledge and qualification (without documents) is not regulated on the legislative level. Actual verification of the foreigner's qualification can be carried out by a Belarusian employer or foreign organization registered outside Belarus (rendering services in recruitment of personnel for Belarusian employers) in the form of testing of that foreigner (job applicant) for compliance with qualification and other requirements announced by employer.

In conclusion let us note that in the Republic of Belarus wide scope of rights is envisaged for refugees, and full-scale assistance and support are provided at the government level in the course of these persons' integration into the Belarusian society. Moreover, within a year from obtaining the refugee status a person can obtain a permit for permanent residence acquiring the corresponding legal status. It is important that refugees have access to mechanisms of rights protection envisaged by national and international legislation.

(Contd.) \_\_\_\_\_

International non-governmental association for research and outreach programs "Development" disseminates information about refugee protection principles and makes efforts to encourage positive attitude of the population to refugees

<sup>12</sup> Version of 30.12.2011 "On rules of enrolment into higher and secondary specialized educational institutions"

<sup>13</sup> With general secondary education

<sup>14</sup> With general secondary education

<sup>15</sup> One can be fired for the violation of this ban, under par. 3 of article 44 of the Labor Code, due to violation of employment rules



**Asylum Seekers, Refugees and  
Internally Displaced Persons  
in the Republic of Belarus:  
Challenges to Social Cohesion**

**LARISSA TITARENKO**

*Socio-Political Module*





## **Introduction**

There is a global rise in forced migration resulting from military and ethnic conflicts and natural disasters. Being one of the stable countries in the post-Soviet region the Republic of Belarus attracts attention of forced migrants seeking asylum and/or protection. Thus, the problem of forced migration affects Belarus, as it acts as a recipient country for foreign nationals and stateless persons seeking refuge and/or asylum.

## **Regulation of problems of refugees and citizens seeking asylum in Belarus**

Refugees usually come to Belarus fearing persecution because of race, ethnicity, religion or political beliefs in their countries of origin. The Department for Citizenship and Migration of the Belarusian Ministry of Interior deals with the refugee cases. The State Border Committee and the Ministry of Labor and Social Protection also play an active role in regulating forced migration. The United Nations Office of the High Commissioner for Refugees (UNHCR) is an international organization that helps refugees settle, consults them and assists in setting up the system of refugee protection.

Belarusian authorities see the main challenge in dividing the flows of forced migrants at the Belarusian border. According to the head of the unit within the International Cooperation Department of the State Border Committee Alexander Svidersky, the task of border officers consists in “dividing mixed migration flows at the border into asylum seekers, illegal migrants and human trafficking victims”, which, in his point of view, means to “ensure that Belarus fulfills its international obligations in the field of migration flow regulation; provide asylum seekers with unobstructed access to the country’s territory and procedure of refugee status identification; ensure observation of the main human rights when dealing with migrants and refugees” (BelaPAN 2013a).

The Republic of Belarus signed key international documents (the 1951 UN Convention Relating to the Status of Refugees and the 1967 UN Protocol Relating to the Status of Refugees) touching upon refugees and asylum seekers and constantly improves the national legislation (Fedorako 2012, Kasinsky 2012), thus guaranteeing rights and freedoms mentioned in those documents to the persons coming to Belarus. This is primarily relevant for foreign nationals who are refugees or seek asylum in Belarus. Belarusian legislation gives these persons an opportunity to address a petition to the Belarusian authorities and after going through the necessary procedures obtain the corresponding status. Under the Belarusian laws (earlier the Law on Refugees adopted in 1995 with later amendments and starting from 2009 the Law on Granting Refugee Status, Complementary and Temporary Protection to Foreign Citizens and Stateless Persons in the Republic of Belarus, adopted in 2008), foreign nationals who were granted refugee status or asylum enjoy all main rights and freedoms in the territory of Belarus. There are necessary legal mechanisms to resolve the issues related to filing a petition, obtaining the status and making arrangements for those who obtained the status they came looking for.

In Belarus forced migrants and refugees usually do not create any additional problems for law enforcement agencies, and the population treats them well. Due to low numbers of refugees (see Table 1) and them being generally law-abiding, these foreign nationals are not a ‘challenge’ or ‘threat’ to social cohesion of the Belarusian society. Interaction of the general public with refugees is rather calm and insignificant, and attitude of the population to refugees, according to the study, is generally neutral (Selivanov 2009: 41). Under the law, these persons can get employed in Belarus, have no restrictions for travelling around the country and are not targets of racial or ethnic oppression.

At the same time, Belarusian authorities thoroughly control observation of Belarusian laws by refugees and other foreign nationals. For instance, “Refugees” automated system and “Dacto” identification system serve this purpose. The latter allows identifying foreign nationals apprehended for violation of border legislation, including persons petitioning for refugee status (BelaPAN 2013b).

## Statistics of refugees and persons in need of asylum in Belarus

According to the Belarusian Ministry of the Interior (Ministry of Interior 2013), 1030 foreign nationals applied for refugee status or complementary protection in Belarus in 2004-2012 (see Table 1). 106 applications for refugee status or complementary protection were accepted in 2012, 32 were being examined by the beginning of 2012. 59 persons obtained the status by the end of 2012, 46 were denied and examination was ceased in 15 cases. Majority of persons who filed such applications were citizens of Afghanistan (69 persons), followed by citizens of Syria (14) and Georgia (11). Other countries were represented by single digits.

If one examines the whole period (2004-2012), 513 out of those 1030 persons were citizens of Afghanistan, 155 were Georgians, 40 were Ukrainians, 31 Russians, 28 citizens of Pakistan, 28 persons from Iran, 26 persons from Iraq, 26 Azerbaijanis, 21 national of Syria (Ministry of Interior 2013). There is an evident predominance of citizens coming from countries involved in warfare or ethnic conflict. 317 applications came from former USSR countries. Common past renders their adaptation and socialization in Belarus rather easy, especially taking into account that most of them speak Russian, i.e. can communicate, find a job on their own and deal with daily routine. As for citizens of Afghanistan, they also usually speak Russian, as during Soviet times they got their education in the USSR (usually in Belarus). That is why their applications seem reasonable. Their integration is also rather smooth: many have friends in Belarus and are well familiar with Belarusian culture.

## Integration of refugees in the Belarusian society

In the cases when voluntary repatriation of refugees from Belarus does not seem possible, one has to ensure their integration in the recipient society. The main tasks are to provide refugees with accommodation and jobs, guarantee their rights and freedoms, as well as give them a chance to preserve and develop their culture, traditions and customs while residing in Belarus. The number of refugees is small, but it is important to provide conditions guaranteed by law and make sure that refugees are not discriminated by Belarusian population, feel comfortable in the country and in the end can fully adapt and integrate in the Belarusian society, despite cultural differences between them and ethnic Belarusians who are the absolute majority in the population (over 80%).

Integration measures are primarily undertaken by Belarusian authorities and refugee organizations. International organizations allocating funds for these tasks also play an active role. In 2005-2011 four projects were developed and implemented with the total budget exceeding 5 mln. USD. The second stage of the project “Integration of Refugees in Belarus, Moldova and Ukraine (phase I)” was launched in 2012. Belarusian Ministry of Interior also supported the UNHCR project “Asylum Quality Initiative in Eastern Europe and the South Caucasus” for 2013—2014 (BelaPAN 2013a).

Up until now there have been practically no cases of rights violations and discrimination of refugees in Belarus or hostility towards them. According to one of the refugee studies, they themselves do not complain to authorities about that (Selivanov 2009: 40). An important reason for conflict-free adaptation of refugees is that many of them speak Russian. Let us show this using two most numerous refugee groups as an example, namely Afghans and Georgians. Most Afghani refugees studied in the Soviet Union, many have Belarusian wives and friends and know Belarusian customs. As for Georgian refugees, their Soviet past combined with knowledge of Russian makes it rather easy for this group to integrate (provided that they are willing to adapt in Belarus).

Refugees who are not willing to adapt try to communicate mostly with their own communities and refugee associations created by many ethnic groups. For instance, international charity organization “Afghan Community”, international association “Afghan Community, Association and Refugees”, and Foundation for Support of Forced Migrants and Refugees “Integration-A” work with Afghan refugees. Georgian non-governmental organizations are also active: Grodno non-governmental association of Georgians, Georgian cultural and enlightenment society “Mamuli”. Such organizations support national culture, bring refugees together, assist in their integration in the recipient society, support their members financially and morally.

There are no refugee camps in Belarus, only temporary accommodation centers, where refugees do not usually stay for a long time. They are accommodated either in places recommended by Belarusian administration (in this case they are provided with financial assistance for relocation), or where their compatriots already reside. Majority of refugees live in Minsk (Selivanov 2009: 44) and other large cities (Gomel, Grodno, Vitebsk). Refugees do not have to stay at recommended locations, as there are no restrictions on the choice of residence. In the latter case the main financial assistance is provided by associations of fellow-countrymen. If refugees have no money, they can continue staying in temporary accommodation centers (in Vitebsk and Gomel), where housing is paid for by the Belarusian government. After seven years and provided that general conditions are met (knowledge of the state language, available source of subsistence, respect for the national legislation etc.), refugees can apply for Belarusian citizenship. Such cases already took place, especially when refugees had Belarusian relatives.

Children of refugees enjoy the right to attend preschool and school institutions free of charge. Two schools in Minsk and Gomel have special programs for children of refugees aimed to facilitate their education and provide assistance. These programs are funded by the United Nations Office of the High Commissioner for Refugees. As for higher education institutions, refugees have no benefits and file their documents in accordance with the usual procedure, which makes entry difficult, primarily because instruction is in the state language.

Medical care is provided to refugees on the same basis as to other foreign nationals residing in Belarus. Refugees have a right to free-of-charge medical assistance at outpatient and polyclinic institutions in their place of registration or temporary residence. Belarusian Red Cross Society also provides refugees with some assistance in medical issues.

Refugees can get assistance of the state employment service when looking for a job. This means that refugees registered by the service can get unemployment benefits, do paid social work, and undergo professional training and retraining. However, many refugees prefer to be self-employed. In that case if they do not reside in their place of registration, they lose the right to state assistance in employment. Some refugees used UNHCR grants to start their own business. For instance, billiard club “Golden Ball” was established in Gomel that way and now it employs 24 persons, 14 of whom are refugees. The club became the center of culture and sports for many forced migrants and hosted national holidays, cultural events and sports competitions. Grodno non-governmental organization of Georgians is another example, it helped 9 Georgian refugees get employed at the pita workshop (Selivanov 2009: 46).

By and large, the most successful cases of integration are cases of refugees who have studied at the Belarusian universities during the Soviet period, established sufficiently solid ties with the community and found jobs. At the same time, judging by the results of research (Selivanov 2009), many refugees consider Belarus only as a temporary refuge place and do not intend to integrate there. In an interview I conducted in October 2012, a young forced migrant from Iran, who was at the time residing in Minsk, expressed his strong intention to leave for the European Union.

## Conclusion

At present, Belarus is witnessing a rise in the number of applications for refugee status. 854 foreign nationals were granted refugee status in Belarus in 1997-2012, and 1,030 applications were filed in 2004-2012. These figures demonstrate that Belarus currently fulfills its international obligations in the field.

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**Table 1. Information on the number of foreign nationals who applied for refugee status or complementary protection in the Republic of Belarus in 2004-2012  
(selectively – only countries with 5 and more applications)**

Country	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total for 2004-2012
Azerbaijan	8	2	1	1	4	3	3	3	1	26
Armenia	6		4		1				1	12
Afghanistan	72	64	44	34	33	83	91	34	58	513
Bangladesh			4		2					6
Georgia	32	23	7	7	14	21	22	18	11	155
Egypt						1		1	4	6
Iraq	5	2	9	2	5	1		2		26
Iran		1	1	1	9	9	2	4	1	28
Kazakhstan				2		1	1	1		5
DR Congo					1	4		2		7
Kyrgyzstan		4	1			1	2			8
Moldova	2		1		1	1		1		6
Pakistan	1				4	7	6	8	2	28
Palestine	3	1			1					5
Poland	1		3		2		5		1	12
Russia					1	8	14	5	3	31
Syria	5			1		1			14	21
Sudan		5	1		1	1	2			10
Tajikistan	7	4		1		1			1	14
Uzbekistan	4			1		2	2			9
Ukraine	1	5	6	1	10	9	3	2	3	40
Ethiopia	1	8							1	10
.....										.....
Total	156	125	95	55	93	160	155	85	106	1030

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**Asylum Seekers, Refugees  
and IDPs in Moldova**

**VLADIMIR GANTA**

*Demographic and Economic Module*





## Refugees in Moldova

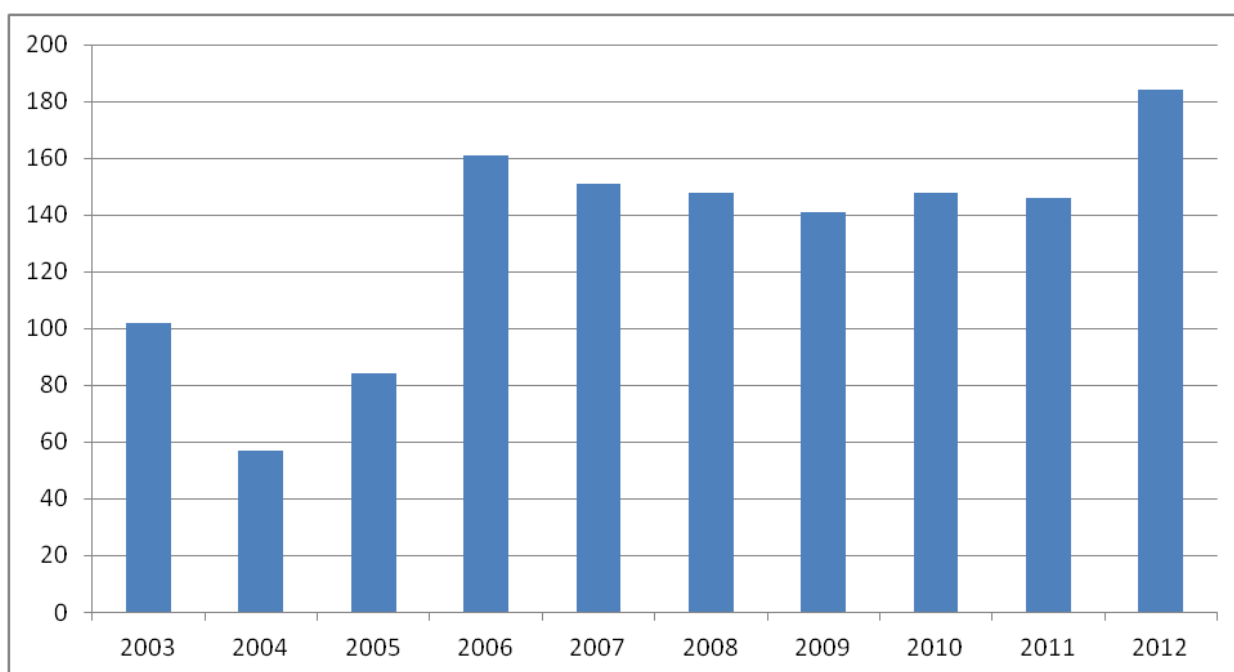
In 2001 Moldova was the 140th country to ratify the 1951 Convention on refugees.

The legal authority responsible for administrating and solving refugees' problems is the Refugees division of the Bureau of Migration and Asylum, within the Ministry of Internal Affairs.

First law on the refugees' status came into power in January 2003. The law was elaborated mostly by UNHCR given its mandate and lack of experience of Moldovan authorities. In 2008 another law on asylum, closer to the EU regulations, was adopted.

Available data offered by the UNHCR<sup>1</sup> indicate two distinct phases: the first three years of the implementation of the law on refugees, when the number of persons granted asylum fluctuated and was lower than 100 per year, and the period from 2006 to 2011 when the yearly number of refugees was more stable, around 150 persons.

**Figure1. Number of refugees in Moldova, 2003-2012, persons**



Source: UNHCR

The higher value of refugees registered in 2012 was caused by a significant increase of refugees from Syria: from 11 persons in 2011, to 55 in 2012.

On average, about 9% of asylum seekers are recognized as refugees.

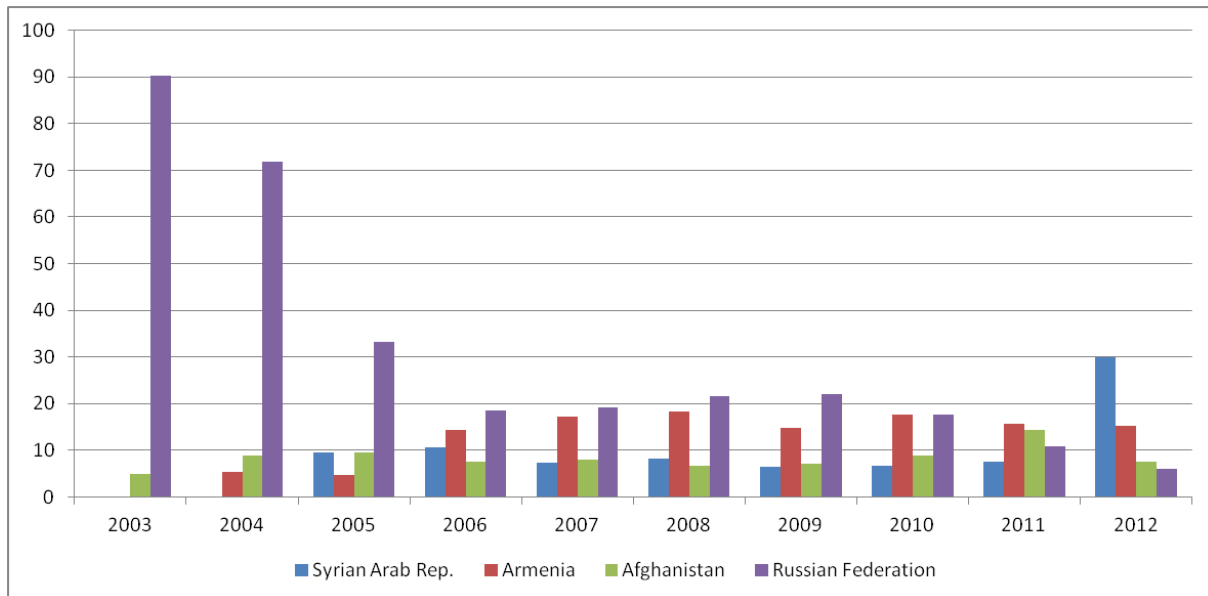
Across the years there was a shift in the share of countries where refugees came from. In 2003 about 90% of refugees were coming from Russia (mostly Chechen Republic). By 2012 this share gradually decreased to 6%.

Armenia is the country that increased its share from almost 0% in 2003, to a stable 16% (on average) starting with 2006.

<sup>1</sup> <http://data.un.org/Data.aspx?d=UNHCR&f=indID%3AType-Ref>

On average, about 8% of refugees registered yearly are from Afghanistan (except for 2011 when the share almost doubled) and other 8% are from Syria. In case of Syria, the share reached 30% in 2012, being the highest increase over one year, since 2003.

**Figure 2. Share of refugees originating from selected countries, 2003-2012, percent**



Source: UNHCR

This high increase in refugees from Syria, in 2012 generated a high interest of media against integration problems faced by refugees in Moldova.

Organizations fighting for human rights and helping refugees used this interest to highlight the main problems.

It seems that bureaucracy and inefficiency of public services worsen refugees' condition. Moreover, one specific problem generated by authorities doesn't allow refugees to benefit their right to travel abroad.

This happens because authorities cannot print passports. The German company that won the contract cannot start printing them because another company accused authorities for not playing fair while selecting the company that will print the passports. According to Ecaterina Silvestru, Head of Refugees Division of the Bureau of Migration and Asylum, by the end of 2013 or beginning of 2014 refugees may obtain the passports.

Another important problem for refugees is finding a good job in Moldova, which is difficult even for Moldovans. For refugees it's more difficult because many of them don't speak neither Romanian or Russian.

Refugees who studied in Moldova or who have relatives in Moldova have better chances to find a job or start a business.

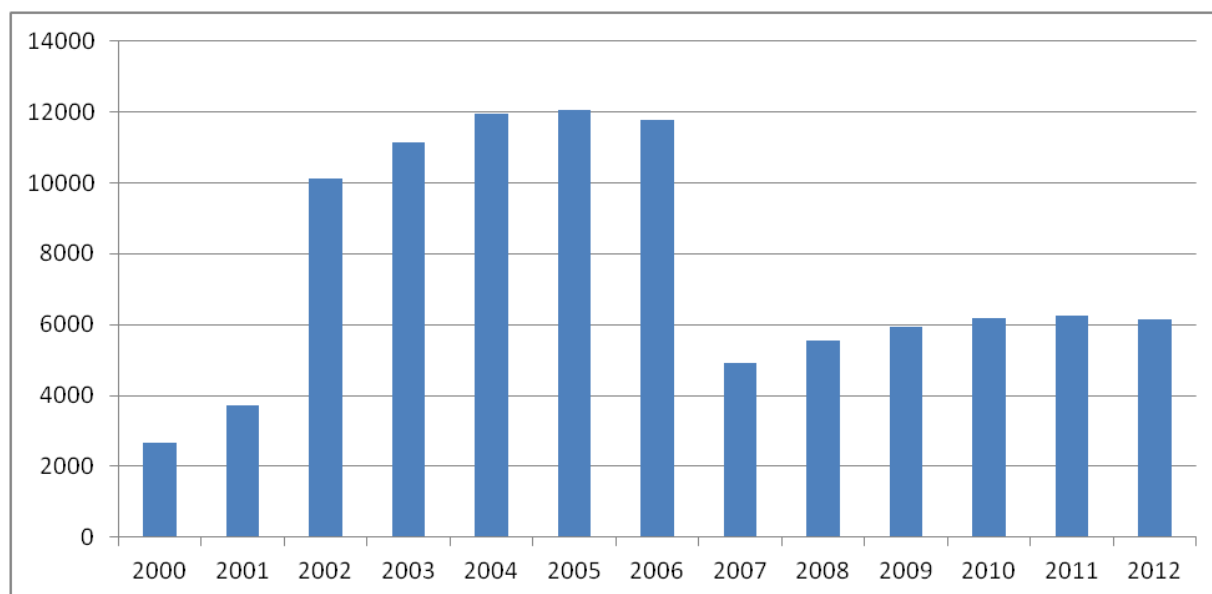
On the positive side, there's one factor that refugees mention as facilitating their integration in Moldovan society that is the tolerance of Moldovans.

## Refugees from Moldova

In the last 20 years two main events may have forced people leave Moldova: the war against Russia in 1992 and 8 years under a communist government.

According to UNHCR data, the number of refugees from Moldova increased from 2000 to 2010 with an surprising boom in 2002-2006 and became stable.

**Figure 3. Refugees from Moldova, 2000-2012, persons**



Source: UNHCR

It's interesting to mention that the huge increase in refugees in 2002 happened after the communist party won the elections in 2001. This increase was caused by a high number of refugees to Germany: 5370, compared to 0 refugees in 2001.

There was also an increase of refugees from Moldova, going to the United States, from 3194 to 4213.

Together, starting with year 2002, US and Germany hold more than 70% of refugees from Moldova. During 2002-2006 the share was more than 90%.

In that period many politicians from opposition and their supporters suffered from communists authorities.

In the last years, among other important countries of destinations for refugees are the United Kingdom, France, Canada.

There are no data on why people were forced to leave Moldova. Increase in the number of refugees from Moldova happened next year after the communist party won the elections. Additional data on reasons of leaving Moldova could offer more exact explanations of the phenomena.

## **Internally Displaced Persons**

In present, it's impossible to track IDPs as there are no data on them. Taking in account the war against Russia in 1992 and the current situation in Transnistria it's reasonable to assume that many people from that region were forced to move to other regions of the country.

Moreover in the last 5 years, Moldova faced extreme natural phenomena like floods<sup>2</sup> and dries<sup>3</sup>, which had great impact on rural areas. Many<sup>4</sup> people lost their houses and moved to other villages or dropped agriculture and went to cities.

Unfortunately, no data on such moves are available. Such persons could be tracked by observing the change of their residence in the population register, but few people bother doing this as this is an administrative procedure that involves some costs and is done only if it helps to obtain some benefits.

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<sup>2</sup> In July-August 2008 Moldova faced one of the one of the biggest flood in the last 200 years. In the North the level of precipitations were 4 to 9 times higher than the seasonal average, in the rest of territory 2-4 times higher.

<sup>3</sup> In 2007 Moldova was hit by an extreme dry which reduced the productivity of agriculture to the level registered after the Second World War. The damage was estimated to ¼ of the GDP. The 2011 dry was similar to that in 2007.

<sup>4</sup> After floods in 2008 about 1200 houses were destroyed and 8000 persons evacuated.

**Access of Refugees, Asylum Seekers  
and IDPs to Socio-Economic Rights  
in the Republic of Moldova**

**TATIANA CIUMAS**

*Legal Module*



## 1. Asylum Seekers

The Law on asylum in the Republic of Moldova<sup>1</sup> establishes the legal and institutional framework for the functioning of the national asylum system. The Law partially transposed the European *acquis* on asylum including rights granted to asylum seekers.

Pending the determination of asylum claims, the asylum seeker receives a temporary asylum seeker identity document, which confirms his or her status as an asylum seeker and serves as a proof of legal stay on the territory. It is not though proof of identity. The document must be renewed monthly.

### 1.1 Right to work

An asylum seeker in Moldova enjoys the right to work, on request, if for objective reasons the person lacks the necessary means of subsistence (article 28 let. 1)). This right is granted temporarily. Although the Law on asylum refers to objective reasons, these are not detailed further in the Law and thus theoretically the person cannot be restricted from employment. In order to be employed the asylum seeker requests from the Bureau of Migration and Asylum a personal number and in the temporary identity document “the right to work” is indicated. An asylum seeker can address to the National Employment Agency and its territorial branches in order to find a job.

### 1.2 Housing

According to Article 28 let. m) of the Law on asylum, asylum seekers have the right to dwell in an accommodation center for the period of procedure. In the case of persons with special needs they benefit too from the adjustment of accommodation and assistance conditions in the center. Accommodation in the Center, which is administrated by the Bureau of Migration and Asylum, is regulated by the new Regulation of the Accommodation Center,<sup>2</sup> in force since 4 January 2013. The Center offers reception and temporary accommodation and the minimum accommodation conditions in the Centre, within the limits of available funds. This includes: a bed, bed linen and kitchen essentials, which correspond to sanitary and hygiene conditions. According to Regulation, asylum seekers and their family members can stay in the centre, with the exception of citizens of the Republic of Moldova and persons who have filed a new asylum application. In the case of persons who filed a new application for asylum the Regulation accepts an exception when new circumstances have arisen or political, military, legal and social transformations occurred in the country of origin, which would endanger the life or safety of the asylum seekers (Point 9 para (2) of the Regulation). Thus under these provisions asylum seekers are included whose claims are being examined in the accelerated procedure and foreigners who have requested access to asylum procedure and who, during the waiting period, have no right to be accommodated.

When there are some assumptions that a newly-arrived asylum seeker in the Centre has a socially-conditioned disease with a major impact on public health, he/she shall be accommodated, after being examined by a specialist. The asylum seeker will be accommodated in a separate place for a period of 10 days to ensure the safety of persons at the Centre and the staff of the Centre (Point 27). If no diseases are detected, upon the expiry of that period the person shall be transferred to a common space. If any diseases are detected, the competent institutions shall be contacted. In this context the

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<sup>1</sup>Adopted on 18 December 2008, published in Monitorul Oficial no. 53-54 of 13 March 2009

<sup>2</sup>Approved through the Government Decision no. 1023 of 28 December 2012, published in Monitorul Oficial no. 1-5 of 4 January 2013. The regulation of the Accommodation Centre regulates the operation and internal order of the Accommodation Centre, the rights and duties of the accommodated persons, the relations between the accommodated persons and its staff, as well as other rights and duties of the employees of the Centre (Point 1).

Regulation does not specify what actions the competent institutions should take and who is responsible for the accommodation of the asylum seeker during the procedure.

This rule of 10 days shall not be applied in case of persons who are:

- sick with active TB;
- have contagious infectious illnesses;
- have mental illnesses accompanied by aggravation when accommodated, which is dangerous for all those living and working in the Centre;
- consume or are addicted to drug or narcotic or psychotropic substances;
- alcohol abusers;
- may endanger the life and health of persons accommodated at the Centre (Point 11).

Although the Regulation sets this restriction, the legislation in force contains no other explanations regarding the procedure to be applied if such cases are identified. The question of who is responsible for the evaluation of each case is not answered either.

The application for accommodation in the Centre submitted by asylum seekers are examined within 24 hours, followed by the issuance of a decision by the Asylum and Integration Directorate within the Bureau of Migration and Asylum, the unit responsible for the administration and management of the Accommodation Centre.

The asylum seeker has the right to stay in the Centre during the entire asylum procedure, meaning in the case of rejected asylum application during the administrative procedure and court examination. It should be remembered that the examination in the court consists of three levels: the territorial court, the Court of Appeal and the Supreme Court of Justice. The accommodation period could, as such, last up to 2 years as, in Moldova. There is no specialized court for asylum cases, and accommodation can be prolonged in the case of repeated asylum applications.

The accommodated persons leave the Centre based on the decision issued by the Bureau of Migration and Asylum. In the case of asylum seekers with a final decision on asylum claims they are obliged to leave the Centre within 15 days the moment the decision enters into force. In the case of foreigners whose asylum applications have been rejected in the accelerated procedure, they must leave the Centre on the same day they are informed of the decision. With regard to the person who must leave the premises the administration of the Centre issues a warning made in a language spoken by the person or which it can reasonably be presumed that he/she speaks. This is recorded in writing and signed, and if the person refuses to sign, the administration shall note this fact.

There is only one Accommodation Centre in Moldova, with a capacity of 200 places, which is an open type centre. The Regulation of the Centre sets the rights and duties of the accommodated persons. This includes the right to benefit from the activities carried out by representatives of the United Nations High Commissioner for Refugees in the Republic of Moldova and other institutions and organizations with which cooperation agreements in the field are signed. There is also the right to receive visitors in the Centre.

### 1.3 Education

Children of asylum seekers and minor asylum seekers have access to the Moldavian educational system in the same conditions as citizens (Article 28 let. p, Article 29 para. (1) Law on Asylum). Their access to the educational system has to be ensured within three months following the date of request, though in the case of the need for a preparatory course this term can be extended to 1 year (Article 29 para. (2)). This provision has never been applied in Moldova as children were integrated in the national system. If needed some additional courses were provided through NGOs. It should be noted



that the length of compulsory education is 9 years and mandatory attendance of school ends when the pupil gets to 16 (Article 9 of the Law on education<sup>3</sup>).

Regarding higher education, the temporary identity document issued to asylum seekers does not allow enrolment in national institutions, as the person has a temporary status in the country. In practice certain institutions have allowed the enrollment of asylum seekers, for paid places, based on their national passport and their identity document, stating legal presence in the territory.

## **1.4 Family life**

The law on civil status acts<sup>4</sup> states that the foreign citizens that reside or who are staying temporarily in the Republic of Moldova can request registration of civil status acts in the same way as the citizens of the Republic of Moldova (Article 10 para. 1). Stateless persons with domicile in the Republic of Moldova, asylum seekers and refugees have the same rights and obligations as the registration of civil status acts as the citizens of the Republic of Moldova (para. 2). In the case of children born on Moldavian territory there are no restrictions regarding registration and the issuance of birth certificates. In the case of marriages reference should be made to the aforementioned Law, which, for the conclusion of marriage, requires the same conditions as in the case of nationals. Thus an asylum seeker with a declared identity, having no passport, will not be able to conclude a marriage as the temporary identity document for asylum seekers is not introduced in the national system of identity documents.

Rejected asylum seekers, who conclude a marriage on the territory of the country, have the possibility of legalizing their stay afterwards based on the provisions of Law no. 200 on the regime of foreigners.

## **1.5 Social protection**

The law on asylum states that families with children and unaccompanied minors benefit from all types of social assistance as citizens of the Republic of Moldova. In this context it should be mentioned that asylum seekers who give birth to children on the territory of the Republic of Moldova have the right to receive children's allowance as citizens in the same conditions.

## **1.6 Clothing and food**

The state has no obligation according to the legislation in force to provide asylum seekers with food or clothing during the asylum procedure or, indeed, afterwards when protection is granted. In the open type accommodation center these services are not provided either. Nevertheless the Office of United Nations High Commissioner for Refugees provides assistance jointly with its implementing partners through financial means or in kind goods.

## **2. Beneficiaries of a form of protection**

Some of the rights of beneficiaries of a form of protection in Moldova have already been addressed in the previous study on integration.<sup>5</sup> Nevertheless some additional issues should be addressed here, namely:

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<sup>3</sup> Law no. 547 of 21 July 1995, published in Monitorul Oficial no. 62-63 of 9 November 1995

<sup>4</sup> Law no. 100 of 26 April 2001, published in Monitorul Oficial no. 97-99 of 17 August 2001

<sup>5</sup> See Titiana Ciumas, Legal Aspects of the Integration of Migrants in the Republic of Moldova Titiana Ciumas, CARIM-East Research Report 2013/37: [http://www.carim-east.eu/media/CARIM-East\\_RR-2013-37.pdf](http://www.carim-east.eu/media/CARIM-East_RR-2013-37.pdf)

## 2.1 Housing

The aspects relating to housing should be analyzed in the context of reserves formulated by the Republic of Moldova when acceding to the 1951 Convention relating to the Status of Refugees and 1967 Protocol<sup>6</sup>. Thus based on Article 42 para. (1) of the 1951 Convention, the Republic of Moldova interprets the provisions of Article 21 of the Convention as not obliged to grant housing to refugees.

Law on asylum in the Republic of Moldova sets the right for socially vulnerable beneficiaries of a form of protection to be accommodated for a determined period of time in accommodation centers (Article 33 para. (1) let. m)). Simultaneously,, the Law does not enumerate the categories of persons considered to be vulnerable. Until January 2013 the procedure for accommodating asylum seekers and protection beneficiaries in the Centre, administrated by the Bureau of Migration and Asylum, was conducted based on a Regulation approved by the director of the Bureau. The beneficiaries of a form of protection were accommodated based on the decision of a specialized commission created in the Bureau from representatives of different units for a period of 3 months. This period is extendable for an undetermined number of times.

The new Regulation of the Accommodation Centre, which entered into force January 2013, regulates the procedure for accommodation including beneficiaries of a form of protection Thus beneficiaries of a form of protection and their family members who have the same status have the right to stay in the Centre for a determined period of time if

- they are former asylum seekers who were granted protection being accommodated in the Centre; or
- they join integration programs.

The asylum seekers accommodated at the Centre who received a form of protection may submit a new application for extension of stay within 3 days of the decision on granting a form of protection being communicated. The application is examined within the period of up to 15 days followed by a decision to extend the period of accommodation or after a refusal to extend it. According to the Regulation the beneficiary who requested accommodation must sign the declaration concerning the lack of means of subsistence. The declaration has a formal content, as it does not contain specific sanctions in the legislation. -It is intended to make the beneficiary acknowledge the content of application and to make efforts to self-support the individual on the territory including housing. At the same time it allows the authority to refuse accommodation, if during the assessment of the accommodation application it is seen that the applicant has the possibility of supporting themselves.

According to Point 31 of the Regulation the asylum seeker who received a form of protection and requested for an extended accommodation period, which was accepted, is entitled to stay for free in the Centre for 3 months from the date of notification of the decision. This period can be extended by no more than 3 months in the case of pregnant women, single parents, and the elderly.

In order to assess individual needs regarding accommodation, according to the present rules, the beneficiaries of a form of protection who lived outside the Centre during the asylum procedure are not allowed to request 3 months accommodation (Point 36). Exceptions in this case will be made only in case of beneficiaries who enter integration programs. It should be noted that according to the Law on integration the person has only 30 days from the moment the form of protection is granted to submit an application for the integration program.

The new Regulation grants asylum seekers who received a form of protection and who do not want to extend the accommodation period, to stay in the Centre for a period of 30 days. This is so they can find a new place of living and become self-reliant.

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<sup>6</sup>Law no. 677 on the accession of the Republic of Moldova to the Convention relating to the status of refugees, as well as the Protocol relating to the status of refugees of 23 November 2001, published in Monitorul Oficial no. 11 December 2001

The new Regulation of the Accommodation Centre develops the provisions included in Article 25 of the mentioned Law. It does so in the context of Law no. 274 on the integration of foreigners in the Republic of Moldova<sup>7</sup>, namely the implementation of the provisions relating to integration programs offered to beneficiaries of a form of protection. Article 25 grants the right to beneficiaries, who have no means of survival, to stay in the premises for up to 6 months. This can be extended for up to 1 year, until the end of the program implementation.

Up to present all participants in integration programs live outside the Centre.

It is important to mention that failure to comply with the obligation relating to integration program might mean the withdrawal of the accommodation right (Art. 26 para. (2)).

From January 2013 the Bureau of Migration and Asylum has had the right to rent spaces to beneficiaries of integration programs and beneficiaries of a form of protection<sup>8</sup>. This service is in line with Article 25 para. (4) and (5) of the Law on integration of foreigners. In order to regulate the renting in 2013 was approved through a Government Decision the Regulation on the procedure and conditions of renting spaces for foreigners benefiting from integration programs and foreigners who obtained a form of protection in the Republic of Moldova<sup>9</sup>. The Regulation of the Accommodation Centre states that renting service will be available to beneficiaries, but within the limits of available rooms (Point 35).

Person requesting rented accommodation are to submit an application to the Bureau of Migration and Asylum in the state language. They must also attach the copy of the identity document and his/her family members (identity document, birth certificate) and certificates confirming the pecuniary income obtained from paid work from: all types of entrepreneurial activity; insurance and social security benefits; income obtained by exploiting the agricultural lands and land plots, including those they own; and other types of income. Persons married to citizens of the Republic of Moldova are excluded, if they own or co-own a residence, or over the last 12 months, if they have an average monthly income per person over the level of the net national monthly average salary.

Based on the submitted documents a special commission<sup>10</sup>, created under the Bureau and which examines the case, performs a social inquiry, referring namely to:

- the living conditions of the applicant;
- the number of minors and other persons who are supported by the applicant and who live with him/her;
- the health status of the applicant or some of the members of his/her family;
- the date when the application was filed (Point 12 of the Regulation).

The file is examined over 30 working days followed by a positive or negative decision issued by the Bureau with the possibility of appeal of any refusal in granting a rented space (Point 17); followed by a lease contract in the case of a positive response.

The Regulation has not been implemented in actions as some improvement conditions activities are now conducted in the Accommodation Centre.

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<sup>7</sup> Law of 27 December 2001, published in Monitorul Oficial no. 48 of 13 March 2012

<sup>8</sup> GD no. 1002 of 28 December 2012, published in Monitorul Oficial no. 1-5 of 4 January 2013

<sup>9</sup> Government Decision no. 1024 of 28 December 2012, published in Monitorul Oficial no. 6-9 of 11 January 2013

<sup>10</sup> The commission was created by order of the Minister of Internal Affairs and the Minister of Labour, Social Protection and Family. The Commission is made up of 8 members (Chairman, Vice Chairman, members and secretary). According to Point 22 of the Regulation the decisions on granting or rejecting rental rights is adopted by the vote of the majority of members of the Commission every month and the result is placed on the official website of the Bureau

## 2.2 Right to work

According to a reservation formulated to the 1951 Convention, the Government of the Republic of Moldova reserves the right to apply the provisions of Article 24 (labour legislation and social security) of the Convention so that they do not infringe upon the constitutional and domestic legislative provisions regarding the right to labour and social protection.

The national law on asylum states, in Article 33, that a beneficiary of a form of protection has the right to be employed by legal or natural persons, to exercise free professions, to carry out entrepreneurial activities, followed by the right to receive wages and benefit from other material rights including social insurance.

The right to work and the protection of work is also set in Article 7 of the Law on the Legal Status of Foreign Citizens and Stateless Persons in the Republic of Moldova<sup>11</sup>. The only restriction contained in the Moldavian legislation refers to functions granted only to citizens, for example, public service.

The Law on the integration of foreigners in the Republic of Moldova granted more opportunities and possibilities to beneficiaries as access to trainings, counselling, and more importantly unemployment allowance. It is important to note that from 1 July 2013 registered unemployed persons at the territorial employment agencies receive health insurance free of charge from the state<sup>12</sup>.

## 3. Internally displaced persons

The population of the Republic of Moldova residing on the left bank of Dniestr River has the same rights and duties as nationals residing on the right bank.

In the context of Transnistrian conflict in 1992 the Government created a special Republican Commission for the coordination of actions referring to material provisions for refugees. Under the term “refugee” were considered persons forced to flee their homes from the left bank of Dniester River. It should be mentioned that Moldova joined the 1951 Convention only in 2001 and UNHCR office was opened in Moldova in 1997, thus the confusion referred to terminology. The Commission was in charge of coordinating the actions at the new living place of IDPs; solving problems between arrivers and local authorities; and helping solve issues relating to employment and allowances. Additionally in the context of the conflict and its consequences the Government, through a decision in that period, ordered the local authorities: to prepare temporary accommodation; to provide food and water; and to create conditions for child care, employment and social protection. These decisions were abolished, in 2001, when the Government paid to Chisinau municipality (capital of the country) for offering living conditions to some IDPs families for the period of time 1997-2000.

In 2004 the Government approved an action plan for providing IDPs with living spaces: this was already the correct term with respect to these persons.

Furthermore in 2005 the Law regarding basic provisions of the special legal status of localities from the left bank of Nistru river (Transnistria)<sup>13</sup> was adopted. The Law refers to the creation in Transnistria, after its demilitarization and democratization, of an autonomous territorial unit with special legal status (Article 3 para. (1). The Law underlines the future structure (Article 3), principles, inter-connection of the bodies, and an assurance of the rights of the Transnistrian population, within the future Law on special legal status of Transnistria (Article 1). The Law establishes the necessity to humanitarian, political, social-economic, legal assistance to the population of Transnistria in order to get over the consequences of the conflict.

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<sup>11</sup> Law no. 275 of 10 November 1994, published in Monitorul Oficial no. 20 of 29 December 1994

<sup>12</sup> Law no. 1585 on compulsory health insurance of 27 February 1998, published in Monitorul Oficial no. 38-39 f 30 April 1998

<sup>13</sup> Adopted on 22 July 2005, published in Monitorul Oficial no. 101-103 of 29 July 2005

In order to implement the provisions of the Law and to ensure that all state authorities will make efforts in order to grant guarantees to the population from Transnistria. Through a Government Decision<sup>14</sup> it was decided that guarantees should refer to property rights, social protection, including wages, pensions, scholarships, social benefits, allowances, bonuses, healthcare and access to other social services. This would apply to all categories of population from Transnistria, at the same level as established in the country's itself.

With a view to promoting and achieving the reintegration goal, in 2011 the Government Commission for country's reintegration<sup>15</sup> was created with the following responsibilities:

- ensuring and coordinating the promotion by all national institutions of the Republic of Moldova of a single policy in the field of the country's reintegration,
- examining proposals drafted by the public authorities, with a view to creating conditions for the reintegration of the Transnistrian region in the economic, informational, political, social and cultural domains of the Republic of Moldova,
- examining, based on the information of public authorities, the evolution of the social-political and economic situation in the communities from the Transnistria region of the Republic of Moldova, including from the security zone.
- coordinating the actions of solving the identified problems and ensures their implementation
- presenting, if need be, to the president of the country and to the Parliament proposals with a view to taking decisions in the process of achieving the reintegration of the country.

At present the Bureau for Reintegration within the State Chancellery is the body responsible for implementation of the reintegration policies of the county, being subordinated to the deputy-prime minister. The main mission of the Bureau is to promote Government policy on territorial, political, economic, and social reintegration of the Republic of Moldova, to conduct consultations and negotiations to resolve the Transnistrian conflict. They develop the legislative framework and grant necessary assistance to the deputy prime minister responsible for the country's reintegration policies (Point 1 of the Bureau's Regulation).

In order to ensure the effective implementation of the Presidential initiative on confidence and security in the Transnistrian conflict settlement and social assistance to the population of left bank communities a government decision was made in 2007. The decision<sup>16</sup> created specialized working groups, which cover major domains, with participation of state institutions including representatives from Transnistrian region.

For ensuring the rights of the Transnistrian population to documentation, the Government Decision of 2005<sup>17</sup> established that persons domiciled in Transnistria, who fulfill the conditions relating to citizenship could confirm citizenship of the Republic of Moldova. They could do so by applying the respective stamp in the Soviet type passport (model of 1974). The passports are valid for an indefinite period if the citizenship of the republic of Moldova and personal number are indicated. Persons registered in Transnistria up to 10 September 2005, receive identity documents from the national passport system free of charge (Point 1) only once. Recognition of 1974 passport by the Moldavian authorities as an identity document of internal use results from the provisions of the new Government Decision of 2013. This approved the Regulation on issuing identity acts and the evidence of the inhabitants of the Republic of Moldova.<sup>18</sup> Additionally the Regulation grants the possibility of changing the passport with an identity document (Point 21 para. (2)).

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<sup>14</sup> Government Decision no. 814 of 2 August 2005, published in Monitorul Oficial no. 104-106 of 5 August 2005

<sup>15</sup> Government Decision no. 132 of 4 March 2011, published in Monitorul Oficial no. 39 of 15 March 2011

<sup>16</sup> Government Decision no. 1178 of 31 October 2007, published in Monitorul Oficial no. 175-177 of 9 November 2007

<sup>17</sup> Government Decision no. 959 of 9 September 2005, published in Monitorul Oficial no. 123-125 of 16 September 1995

<sup>18</sup> Government Decision no. 125 of 18 February 2013, published in Monitorul Oficial 36-40 of 22 February 2013, in force since 7 March 2013



**Asylum-Seekers, Refugees and  
Displaced Persons in Moldova:  
Problems of Recognition,  
Social Protection and Integration**

**VALERIU MOSNEAGA**

*Socio-Political Module*





## Social portrait of a forced migrant

As a result of armed conflict in March-July 1992, refugees and internally displaced persons appeared in Moldova. A total number of around 800 persons perished during the conflict (320 persons from the constitutional forces of the Republic of Moldova and 425 persons representing Transnistria). Direct material damage from the military action amounted to around 400 mln. USD<sup>1</sup>.

In spring and summer 1992, the armed conflict had a certain impact upon migration in the country. Around 100,000 refugees were registered during the conflict. These persons fled: to Belarus (859 persons), Russia (17,346 persons), Ukraine (61,000, 30 thousand among them being children) and countries outside the CIS (around 20,000 persons)<sup>2</sup>. After the end of hostilities in the eastern part of Moldova, practically all refugees to Ukraine returned to the places of their permanent residence<sup>3</sup>.

51,289 persons were registered as internally displaced persons in the right bank of the Dniester River region of Moldova (28,746 of them were children). There were representatives of different nationalities among those who fled from the war. Approximately 95% were women, children, and retired people from both banks of the Dniester. Around 80% of internally displaced persons were ethnic Moldovans<sup>4</sup>.

The end of military action and the signature of the peace agreement, with the help of Russia and the OSCE as mediators, on unobstructed return of persons to the places of their permanent residence allowed promptly resolving the issue of displaced persons. Most people returned to the places of their permanent residence. At present, the problem of displaced persons as a mass-scale social phenomenon is practically resolved. However, there are also people (around 200 families) on the right bank, for whom this problem still exists, primarily when it comes to housing<sup>5</sup>.

Signing the 1951 UN Convention and the 1967 supplementary Protocol in 2001, Moldova started actively participate in international refugee assistance programs. 1,449 persons acquired the refugee status and received humanitarian assistance in 2002-2012; 1,100 persons were recognized as asylum-seekers. There are representatives of over 25 countries from all continents among them. Significant share of persons hoping for international humanitarian aid were ethnic Chechens from Russia. Until 2006, they were the absolute majority of persons who received international assistance and support. One can unequivocally see the trend towards the decline of the share of refugees and asylum seekers from Russia in the overall flow of forced migrants. In 2012, the number of forced migrants and asylum seekers from Russia went down to 7.57% amongst the refugees/humanitarian aid recipients, and to 1.33% amongst the asylum seekers. This shows that this problem has been resolved in Russia. At the same time, there is an increase in the number of forced migrants from Syria. In 2012, their share was 29.73% amongst the refugees/humanitarian aid recipients, and 44% amongst the asylum seekers<sup>6</sup>. This demonstrates the integration of Moldova integration into the regional (post-Soviet), as well as international system of assistance to refugees and asylum seekers.

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<sup>1</sup> Mukomel V. International and regional armed conflicts: human loss, economic damage and social consequences [in Russian]. *Identity and conflict in post-Soviet states*. Ed. by M.B. Olcott, V. Tishkova and A. Malashenko; Moscow Carnegie Center. Moscow, Complex-Progress, 1997, p. 311.

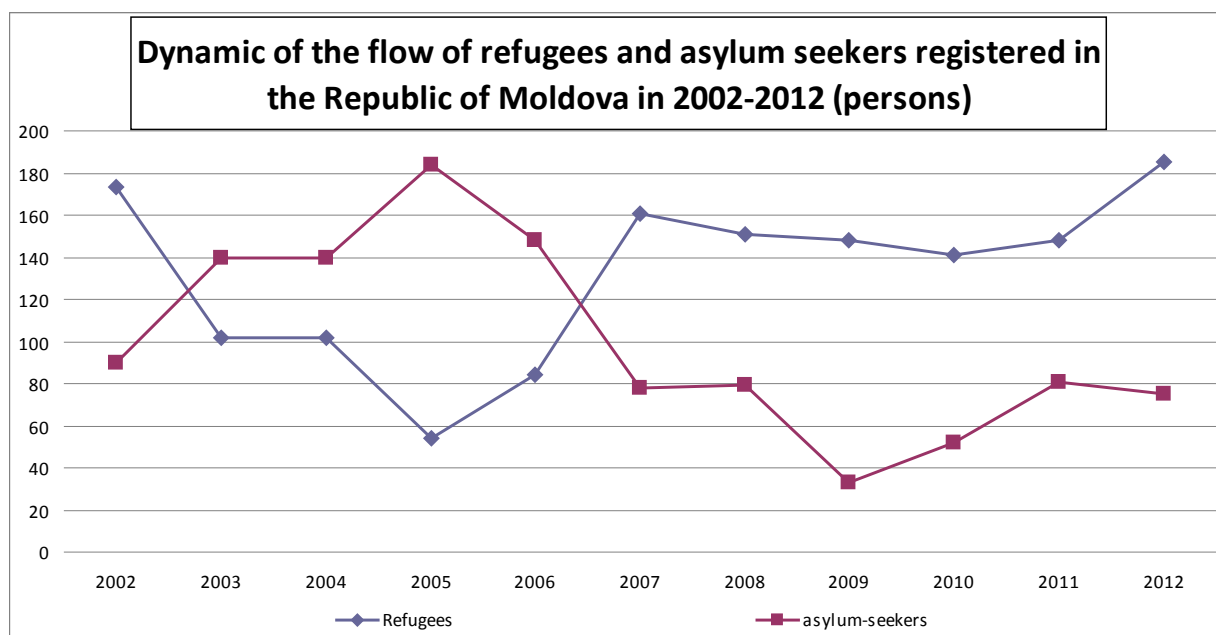
<sup>2</sup> Mosneaga V. Armed conflict in the Republic of Moldova and the problem of displaced persons. [in Russian]. *MOLDOSCOPIE (Problems of political analysis)*. Part VII. Chisinau, Mold. SU, 1995, p.93.

<sup>3</sup> Malinovska O. "Refugees in Ukraine". *Migration Issues, Ukrainian Analytical Informative Journal*, 1998, №2:2-3

<sup>4</sup> Moraru V., Mosneaga V., Rusnak G. *Migration pendulum* [in Russian]. Chisinau, "Tipografia-Sirius", 2012, p.18.

<sup>5</sup> Ibid, p. 18.

<sup>6</sup> Data of the Bureau for Migration and Asylum, Moldovan Ministry of Interior, for 2012.



Gender and age-wise, 75.57% of refugees are men, and 24.43% are women. Every sixth refugee (17.53%) is a child. This clearly demonstrates that there are families amongst the refugees.

At the same time, the picture is somewhat different for persons seeking asylum. Men represent an absolute majority (85.36%). The share of women is smaller and equals to 14.64%. The share of children is even smaller (8.1%) amongst this category of people counting on international humanitarian aid. These data demonstrate that the number of families amongst the asylum seekers is significantly smaller.

### Legislative and normative framework

Moldovan policy regarding refugees and asylum relies on the legislative and normative framework regulating immigration of foreign nationals and stateless persons: the Law No. 269 of 9 November 1994 on Exit from and Entry into the Republic of Moldova; the Law No. 275 of 10 November 1994 on Legal Status of Foreign Nationals and Stateless Persons in the Republic of Moldova; the Law No. 180 of 10 July 2008 on Labor Migration; the Law No. 200 of 16 July 2010 on Regime of Foreigners in the Republic of Moldova.

The main legal act of the Moldovan asylum system is the Law No. 270 of 18 December 2008 on Asylum in the Republic of Moldova. Developing its new Law on Asylum, Moldova adhered to the EU *acquis communautaire*, as well as provisions of the 1951 Convention relating to the Status of Refugees and the 1967 Supplementary Protocol. The law also incorporated best practices that emerged after Moldova has joined the Convention in 2001. The law is consistent and clarifies all stages of the asylum system in Moldova. However, the law does not stipulate norms and procedures regulating integration, including their institutional aspects<sup>7</sup>. The Law No. 274 of 27 December 2011 on Integration of Foreigners in the Republic of Moldova filled these gaps.

In order to pay proper attention to migrants, refugees and asylum seekers at the state level, the government adopted the Regulation No. 448 of 27 April 2006 on Approval of the National Action

<sup>7</sup> Ciumas T. *Legislative framework for asylum in the Republic of Moldova* [in Russian]. Explanatory note 2012/25, Legal framework of migration. September 2012, CARIM-East project, European University Institute, <http://www.carim-east.eu/media/legal%20module/exno/EN%202012-25.pdf>.

Program in the Field of Migration and Asylum. The program was a long-term document identifying specific actions to create socio-economic conditions that would prevent illegal migration, reduce its negative consequences, and strengthen the national asylum system. Today, the main strategic document in this area is the National Strategy in the Field of Migration and Asylum for 2011-2020 (Government Regulation No. 655 of 8 September 2011).

One can also mention other normative acts adopted over the recent years: Government Regulation No. 1009 of 26 December 2011 on Approval of the Action Plan for 2011-2015 on Implementation of the National Strategy in the Field of Migration and Asylum (2011-2020); Government Regulation No. 524 of 11 July 2011 on Approval of the Regulation on Evaluation of Language Competency and Assessment of the Level of the Proficiency in the State Language by Foreigners who Apply for the Right to Permanent Residence in the Republic of Moldova; Government Regulation No. 108 of 17 February 2012 on Approval of the Amount of Financial Assistance to Refugees and Persons Enjoying Humanitarian Protection for 2012; Government Regulation No. 1002 of 28 December 2012 on Modification of Appendix 1 to the Regulation on Services Rendered for Pay (on renting accommodation for a certain period); Government Regulation No. 71 of 30 January 2004 on Creation of the Center for Temporary Accommodation of Foreigners; Government Regulation No. 1023 of 28 December 2012 on Approval of the Regulation of the Center for Accommodation of Refugees and Asylum Seekers etc.

Development of the Regulation relied on the Law on Asylum in the Republic of Moldova taking into account requirements and recommendations of the Council Directive 2003/9/EC of 27 January 2003 on minimal standards for asylum seekers and recommendations of UN experts (within the UNDP project)<sup>8</sup>.

### **Agencies dealing with refugees and asylum seekers**

Activities of the Moldovan public agencies dealing with forced migrants, refugees and asylum seekers in Moldova are coordinated by Bureau for Migration and Asylum of the Ministry of Interior, particularly its specialized division – Department for Refugee Affairs. It works with border police within the Ministry of Interior, Ministry of Foreign Affairs, Information and Security Service, other ministries and agencies of Moldova; international organizations (UNHCR, IOM, ILO), civil society, national and foreign non-governmental organizations.

Significant attention is paid to training on how to work with refugees and asylum seekers. In May 2012, Moldovan judges and attorneys took part in a research and practical workshop on refugee rights (Kiev, Ukraine) organized by UNHCR within the regional protection program “Support to UNHCR Activities in Eastern Europe (Belarus, Ukraine, Moldova)”. Border officers and students of the border service college have undergone training (town of Ungheni) to enhance the quality of work with refugees and asylum seekers. The following documents were developed: agency documents instructing how to deal with applications for asylum at the Center for Temporary Accommodation of Foreigners; guidelines on translation services at the Migration and Asylum Bureau; code of conduct for interpreters and translators involved in asylum procedure. A special training program for the personnel of the Center for Temporary Accommodation has been launched<sup>9</sup>.

Programs for teaching refugee law were developed for the national border service college and the Moldovan Stefan Cel Mare police academy. In September 2009, a course on refugee law has been launched at the border service college and, starting from 2010, – at the Police Academy of the Moldovan Ministry of Interior.

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<sup>8</sup> *Nota informativa privind activitatea Directiei refugiatii pe parcursul anului 2012*. Chisinau, BMA MAI, 2013, p.1.

<sup>9</sup> Ibid, p.4.

Protection monitoring group under the UNHCR has taught 14 introductory courses for Moldovan border officers on access to national asylum procedure in cases, when asylum seeker files an application at one of 22 border checkpoints, regional units and checkpoints of the border service in the northern, western and south-eastern parts of the country<sup>10</sup>.

### **Moldovan policy regarding integration of refugees and asylum seekers**

The implementation of the law on integration of foreigners relies on interdepartmental consultations and the harmonization of the national legislation. Significant assistance was rendered by international experts and civil society representatives. A report containing civil society recommendations, as well as an individual integration plan and a model form for evaluation of integration needs have been elaborated. A series of events were held to discuss the best European practices of foreigners' integration and mechanisms for cooperation between national institutions, as well as workshops and training sessions for territorial employment agencies and for social workers in Chisinau. Special methodology has been developed, and outreach activities have been planned. A section for integration and adaptation was established within the Migration and Asylum Bureau (implementation of the Government Regulation No. 130). Different aspects of integration are dealt with: language courses, consultations regarding the acquisition of the Moldovan citizenship, socio-cultural adaptation, information about the available opportunities, etc. International Independent University of Moldova holds free courses of Romanian for refugees and humanitarian aid recipients<sup>11</sup>. National European Trainers Academy of Moldova also offers language courses<sup>12</sup>.

Within the local integration project, specialized medical assistance in the form of psychotherapeutic and psychological support provided to asylum seekers, refugees and humanitarian aid recipients became part of the general medical care package<sup>13</sup>.

As a result of the EU project for local integration of refugees (second phase), renovated housing was allocated in the villages of Mereni (Anenii Noi area) and Razeni (Ialoveni area), and 27 refugees were accommodated there<sup>14</sup>.

Every month decisions regarding social, material, medical, legal assistance, professional training and employment are made at meetings of the UNHCR social commission together with the representatives of non-governmental organizations and the Migration and Asylum Bureau. Refugees are paid an allowance annually (starting from 2002). Its size is stipulated by a Government Regulation. Field trips are organized to assess the living conditions and the degree of integration, as well as to consult and inform the refugees and the asylum seekers, and to examine their needs and problems. Sociological methods of studying the public opinion are widely used for that purpose.

The Center for Temporary Accommodation of refugees and asylum seekers plays a great role in the process of adaptation of refugees and asylum seekers. The Center opened in 2002 in the Moldovan

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<sup>10</sup> Course of implementation of the ten-component action plan in the field of refugee protection and mixed migration, adopted by the regional office of UNHCR in Belarus, Moldova and Ukraine [in Russian]. – Regional Office in Kiev, April 2010. [http://unhcr.org.ua/img/uploads/docs/10PP-Impl-status-final\\_rus.doc](http://unhcr.org.ua/img/uploads/docs/10PP-Impl-status-final_rus.doc); Refugee protection and border cooperation. Final report. Regional border conference, 20-22 September 2011, Lvov, Ukraine, [unhcr.org.ua/attachments/article/413](http://unhcr.org.ua/attachments/article/413). Lviv Conference Report 20-22 September 11\_rus1.doc.

<sup>11</sup> Ibid.

<sup>12</sup> *Nota informativa privind activitatea Directiei refugianti pe parcursul anului 2012*, p.5-7.

<sup>13</sup> *Course of implementation of the ten-component action plan in the field of refugee protection and mixed migration, adopted by the regional office of UNHCR in Belarus, Moldova and Ukraine.*

<sup>14</sup> Kessler P., Jioara S. Official ceremony of the start of refugee housing reconstruction. *Bulletin of the European Union and UNHCR project "Local Integration of Refugees"* No. 6 (18) June 2011, [http://unhcr.org.ua/files/mf49\\_b.pdf](http://unhcr.org.ua/files/mf49_b.pdf).

capital with the support of the United Nations High Commissioner for Refugees Office (Government Regulation No. 409 of 5 April 2002)<sup>15</sup>.

According to the data of the Department for Refugee Affairs, Migration and Asylum Bureau, there is a rise in the number of asylum seekers willing to be accommodated at the Center for Temporary Accommodation. It is at the Center, that the process of adaptation to the Moldovan realities begins, diverse assistance in integration is rendered (studying the constitution, customs, traditions, and culture of Moldova); legal consultations and social support are provided; cultural, sports and entertainment events are held; International Day for Protection of Children and International Refugee Day (20 June) are celebrated, etc. The UNHCR helped to open a computer class that gives the residents an opportunity to communicate with relatives and friends in other countries and regions via Internet. Medical assistance is offered; outreach events are organized to explain the dangers of epidemic, sexual, and other diseases. However, practice has shown that the Center has a great need for full-time physicians and paramedical personnel and there is a deficit of medication.

Documentation procedures of the Moldovan state play an important role in integration of refugees and asylum seekers. Government Regulation No. 626 of 28 May 2005 on Identity Documents of Refugees approved a model ID and a model travel document for refugees indicating personal registration numbers, and now documents are provided to this population category.

International agencies note that “there were no registered cases, when asylum seekers from amidst the ethnic Chechens would be denied humanitarian protection or its extension after one year. Migration and Asylum Bureau has not registered a single case, when a Chechen asylum seeker would be forcefully expelled or deported from Moldova. The number of the Chechen asylum seekers, refugees or humanitarian protection recipients decreased. This fact demonstrates that the majority of them voluntarily went to their home country having received material assistance from the UNHCR Office in Moldova.

No cases have been registered, when persons who were denied some form of protection or those who voluntarily returned to their home country, would be subjected to physical or moral persecution (including Chechens). Persons who were denied refugee status, and who chose voluntary repatriation, remain under the observation and monitoring of the Migration and Asylum Bureau until their departure from Moldova”<sup>16</sup>.

## International cooperation

The protocol on cooperation in the field of migration and asylum was signed between the Moldovan Ministry of the Interior and the Romanian Ministry of Administration and Interior (Government Regulation No. 1074 of 16 November 2010). It facilitated the acquisition of information from asylum seekers’ countries of origin. Collaboration with the Romanian colleagues (the Romanian Immigration Office), and the use of their portal, reduce time to examine the applications and enhance the quality of decisions made.

There is a partnership with the Federal Migration and Asylum Office (Nuremberg, Germany). The MILO and the BAMF database (Germany) is used to make prompt and adequate decisions as well as to obtain information on refugees and asylum seekers from countries of origin.

In 2012, a training seminar entitled “Techniques for interviewing unaccompanied minors” was held together with the Dutch experts. The Romanian experts delivered a course “Translating services within

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<sup>15</sup> United Nations Committee on the Elimination of Racial Discrimination, Seventy-first session, Geneva, 30 July-17 August 2007, <http://tnu.podelise.ru/download/docs-216930/216930.doc>

<sup>16</sup> United Nations Committee on the Elimination of Racial Discrimination, Seventy-first session, Geneva, 30 July-17 August 2007, <http://tnu.podelise.ru/download/docs-216930/216930.doc>

the asylum procedure”. Training seminars were held in cooperation with the Dutch and Romanian colleagues: “The role of information from the countries of origin in the asylum procedure” (Romania) and “The United European Asylum System” (Netherlands).

A number of projects were submitted to the European Commission’s TAIEX program dealing with quality standards, evaluation of the Moldovan legislation in the field of asylum, etc.

In May 2012, officers of the Department for Refugee Affairs of the Moldovan Ministry of the Interior took part in a meeting (Tbilisi, Georgia) to discuss the implementation of the Quality Initiative project in Eastern Europe and the South Caucasus and importance of the European Asylum Curriculum for these countries.

### **Cooperation with international organizations and civil society**

Trying to resolve the problems of refugees and asylum seekers, the Moldovan public bodies cooperate with international organizations and civil society. Let us primarily note active collaboration with the UNHCR Office in Moldova and the IOM office.

In order to ensure the quality and the efficiency of decision-making and acquisition of information from the country of origin, quarterly meetings and consultations with the legal advisor of the UNHCR office are carried out. In 2010, the Istanbul Protocol was published (4,000 copies); it is a guide to efficient investigation and documentation of torture and other cruel, inhumane or degrading treatment or punishment that contains internationally recognized standards and instructions on how to identify and document the indicators of torture for physicians and lawyers in Moldova<sup>17</sup>.

Interaction with international and non-governmental organizations of Moldova relies on relevant agreements/cooperation memorandums. This practice started in 2009, when the UNHCR signed the Memorandum of Understanding with the border service of Moldova, Migration and Asylum Bureau of the Moldovan Ministry of the Interior and a non-governmental organization “The Law Centre of Advocates”. The memorandum stipulates that joint monitoring of protection will be regularly carried out, including in border areas, in order to ensure the entry of asylum seekers into the country, and their access to asylum procedures. In 2012, agreements on cooperation in assistance to asylum and humanitarian aid seekers were signed with two non-governmental organizations: Ave Copiii and the Law Centre of Advocates. Successful cooperation takes place with such non-governmental organizations as “Centrul de caritate pentru refugiatii” (*Center of Charity for Refugees*) and “Centrul de consultare in afaceri” (*Center of Consultations in Business*), etc. In Moldova, there is a network of non-governmental organizations supported by the Dutch Council for Refugees (MATRA Foundation)<sup>18</sup>.

Information on activities of the Department for Refugee Affairs is posted on the Ministry of the Interior website, which facilitates contact and informs the civil society and the general public. There one can also obtain necessary information on actions undertaken and planned, as well as draft legislative and normative acts. Officers of the Department for Refugee Affairs make radio and TV statements on the International Refugee Day.

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<sup>17</sup> Course of implementation of the ten-component action plan in the field of refugee protection and mixed migration, adopted by the regional office of UNHCR in Belarus, Moldova and Ukraine.

<sup>18</sup> Ibid.

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## Appendix

**Table 1. Number of refugees / humanitarian aid recipients and persons seeking asylum in the Republic of Moldova (2002-2012)<sup>19</sup>**

	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>Total</b>
<i>Refugees</i>	173	102	102	54	84	161	151	148	141	148	185	<b>1449</b>
<i>Women</i>	...	...	43	17	24	41	45	45	41	47	51	<b>354</b>
<i>Children</i>	...	...	47	19	25	35	31	25	23	26	23	<b>254</b>
<i>From Russia</i>	154	92	92	41	28	30	29	32	31	26	14	<b>569</b>
<i>Applicants</i>	90	140	140	184	148	78	79	33	52	81	75	<b>1100</b>
<i>Women</i>	...	...	20	30	21	11	13	7	21	25	13	<b>161</b>
<i>Children</i>	...	...	12	29	13	0	7	0	11	16	1	<b>89</b>
<i>From Russia</i>	35	36	36	42	6	3	12	2	4	7	1	<b>184</b>

<sup>19</sup> Anuarul statistic al Republicii Moldova 2004. Chisinau, BNS, 2004, p.81; Anuarul statistic al Republicii Moldova 2005. Chisinau, BNS, 2005, p.69; Anuarul statistic al Republicii Moldova 2006. Chisinau, BNS, 2006, p.80; Anuarul statistic al Republicii Moldova 2007. Chisinau, BNS, 2007, p.74; Anuarul statistic al Republicii Moldova 2008. Chisinau, BNS, 2008, p.71; Anuarul statistic al Republicii Moldova 2009. Chisinau, BNS, 2009, p.65; Anuarul statistic al Republicii Moldova 2010. Chisinau, BNS, 2010, p.65; Anuarul statistic al Republicii Moldova 2011. Chisinau, BNS, 2011, p.65; Anuarul statistic al Republicii Moldova 2012. Chisinau, BNS, 2012, p.65.



**Asylum Seekers, Refugees,  
and Internally Displaced  
Persons in Ukraine**

**OLEKSII POZNIAK**

*Demographic and Economic Module*



Article 26 of the Ukrainian Constitution makes it possible to grant asylum to foreigners and stateless persons in the manner determined by law. The Ukrainian Law “On Refugees” was first adopted in 1993 and from 1996 the procedure to grant refugee status was introduced in Ukraine. In 2001 the new law “On Refugees” was adopted, which tightened the requirements for applicants seeking refugee status. Ukraine’s current law “On Refugees” was adopted in 2011, and provides complementary forms of protection for asylum seekers.

The granting of refugee status comes under the purview of the State Migration Service of Ukraine (until 2011, it was under the purview of the now-dissolved State Committee of Ukraine on Nationalities and Religions). The legal status of refugees in Ukraine is on par with that of foreign nationals, who live permanently in Ukraine and possess all the same rights as Ukrainian citizens, with the exception of voting rights. According to current law, refugee status is valid for five years, after which the State Migration Service makes a decision to extend refugee status or initiates a procedure to cancel it. After three years of residence with refugee status, a person receives the right to apply for Ukrainian citizenship

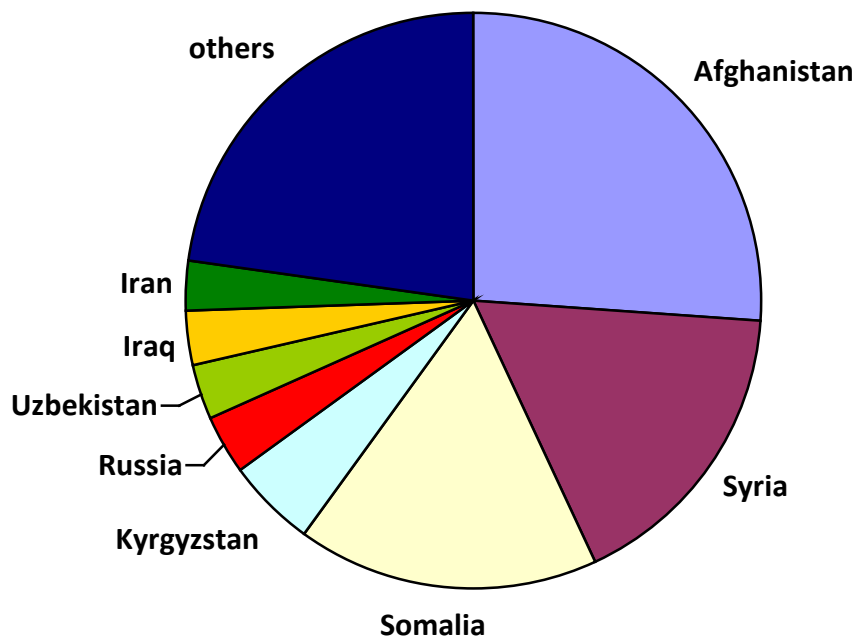
Since the procedure for granting refugee status was first implemented, a total of almost 27 thousand people, including children, have applied (Table 1). A positive decision was given to 6.1 thousand people, which amounts to 22.7% of all who applied. An especially high frequency of positive decisions occurred during the first years of the procedure’s implementation.

**Table 1. Number of Asylum Seekers who Submitted a Petition for Refugee Status, and Persons who Received a Positive Decision on their Application for Refugee Status or Complementary Protection, 1996-2012**

	Persons Who Applied for Refugee Status	Persons Who Received a Positive Decision
1996	1443	1161
1997	2716	1267
1998	1667	753
1999	1739	643
2000	1893	895
2001	916	455
2002	535	2
2003	1367	56
2004	1364	80
2005	1740	49
2006	2075	65
2007	2155	33
2008	2155	125
2009	1255	125
2010	1500	124
2011	890	133
2012	1573	152

Source: data from the State Migration Service of Ukraine

During 2012, 1573 people requested refugee status from the State Migration Service of Ukraine agencies, including 411 citizens from Afghanistan, 268 from Syria, 264 from Somalia, and fairly large numbers of groups comprised of citizens from Kyrgyzstan, Russia, Uzbekistan, Iraq, Iran, Palestine, Eritrea, Sudan, Guinea, DR Congo, and Georgia (Figure 1). In 2012, refugee status was granted to 63 persons (of whom 36 were citizens of Afghanistan, 6 of Azerbaijan, 4 of Somalia), and complementary protection to 89 persons (of whom 41 were citizens of Somalia, 17 of Afghanistan, 16 of Syria, and 8 of Iraq.)

**Figure 1. Distribution of Persons who Applied for Refugee Status in 2012, by citizenship**

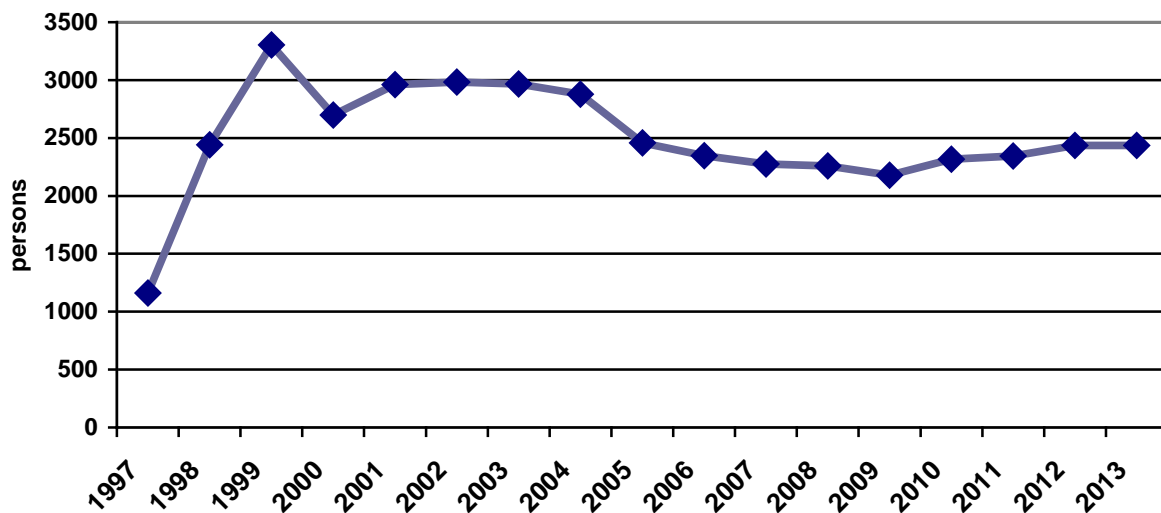
Source: data from the State Migration Service of Ukraine

As of January 01, 2013 there were 2435 persons registered as recognized refugees in Ukraine. The maximum number of people was reached at the beginning of 1999 – over 3.3 thousand people. Over the course of 1997-2002, the number of refugees grew more than 2.5 times, and the period 2003-2009 saw a gradual decrease in this population contingent (Figure 2). But in recent years the quantity of refugees has increased slightly. Over 2/3 of refugees are men. Almost ¾ of this contingent of refugees are persons of working age and only less than 3% are older than working age.

A recent decrease in the number of refugees compared with the beginning of the millennium is related to the return of some to their homelands after the normalization of the situation in their countries, the loss of refugee status, and also to naturalization. Throughout 2012, Ukrainian citizenship was granted to 15 persons, who had previously received refugee status. Since the end of the 1990's, a total of over one thousand refugees received Ukrainian citizenship.

Almost half of all refugees are concentrated in the capital city area (the city of Kiev and Kiev Region), and over one quarter are the in Odessa Region. Moreover, significant contingents of refugees reside in the Lvov, Kharkov, and Zakarpatskaya Regions. In Ukraine there are two temporary accommodation centers, one of which is located in the city of Odessa, and the second in the Zakarpatskaya Region (the office is located in the Region's center, Uzhgorod, and living quarters in the cities of Mukachevo and Perechine). In 2014, a new temporary accommodation center for refugees is expected to open in the city of Yagotin in the Kiev Region. The centers in operation have around 300 spaces, so the fact that they do not meet the demand means a very serious housing problem for refugees.

**Figure 2. Changes in the Number of Refugees in Ukraine 1997-2013  
(at the beginning of the year)**



Source: data from the State Migration Service of Ukraine

Among persons who received refugee status in Ukraine during the first years that the procedure was implemented, Afghani citizens strongly dominated. At the beginning of 1997, their percentage rose to 86%. Generally, these were former students from Ukrainian institutions of higher education who, after the transition of power in Afghanistan could not return to their homeland. Although in subsequent years the proportion of citizens from this country, out of the total number of refugees, decreased, they now comprise over half of this population contingent (from the beginning of 2013 – 55.4 % or 1348 people.) Other large groups are citizens of Armenia (199 people), Azerbaijan (170), Russia (107— a large number of whom are from Chechnya), Georgia (71), DR Congo (55), Sudan and Iraq (53 each), Syria (44), Iran (41), Congo (29), Angola (28), Belarus (24), Ethiopia (22), Somalia (21), Palestine (19), Uzbekistan (15). In total among persons with refugee status in Ukraine, there are citizens from more than 40 countries of Asia, Africa, the CIS, and the Former Yugoslavia, as well as 19 persons without citizenship.

The Order of the Cabinet of Ministers of Ukraine from August 22, 2012 N. 605-r approved the Action Plan on the Integration of Refugees and Persons in Need of Complementary Protection into Ukrainian Society until 2020. The plan provides a set of measures, including the development of a program for the study of Ukrainian language and history, the formation of a tolerant attitude towards refugees and persons needing complimentary protection, the provision of housing to refugees, the facilitation of refugees' national-cultural identities, and the creation of centers for their social integration. In the process of the implementation of the plan by the leadership of the State Migration Service of Ukraine, there were a series of meetings with representatives of foreign governments and international organizations, in a number of areas granting temporary shelter to refugees. The State Employment Service of Ukraine conducts outreach activities including mobile job fairs for refugees. At the beginning of 2013, there were four recognized refugees registered with the State Employment Service of Ukraine, two of whom received unemployed status and unemployment assistance. The others were granted informational consultation services. Under the financial support of Regional Offices of the UN High Commissioner for Refugees, Ukrainian language courses are run in Belarus, Moldova, and Ukraine (in the cities of Kiev, Kharkov, and Odessa; during 2012, 72 refugees received certificates of completion for these courses. In Kharkov there are two Sunday schools for refugee

children from Afghanistan, for the study of their native language and the cultural heritage of their people. Through the efforts of non-governmental organizations, the media provides coverage of issues related to the formation of a tolerant attitude of the local population towards refugees.

According to data from the Office of the UN High Commissioner for Refugees, 26.4 thousand Ukrainian citizens reside in other countries of the world where they have been granted refugee status or humanitarian protection. Belonging to an ethnic minority is, as a general rule, grounds for receiving their respective status. The majority of this contingent of applicants (over 20 thousand people) resides in Germany, where there is a special program through which Jews from the Post-Soviet states can receive refugee status. However, in recent years there has been a proliferation of cases granting refugee status to Ukrainian citizens for political reasons.

Currently, 1.5-1.9 thousand Ukrainian citizens petition annually for refugee status in foreign countries (Table 2). The majority of them are in reality economic migrants. In 2012, in particular, the largest number of applications was recorded in the USA (274), France (210), Canada (178), the Czech Republic (174), Sweden (133), Germany (124), and Poland (72). State agencies in foreign countries approve 1/6-1/4 of all applications.

In Ukraine during the period of independence there were no cases of forced migration of any significant contingent of persons within the country. The most recent massive forced movement of people took place after the Chernobyl nuclear power plant accident, which occurred on April 26, 1986. From April 27 to August 1986, 90.8 thousand people were evacuated from 81 settlements in Ukraine.<sup>1</sup> From 1986-1991, the total population loss in the affected area was 157 thousand people.<sup>2</sup> From the beginning of 1990 to mid-1994, 23.5 thousand people from the affected settlements were moved under mandatory relocation and 22.4 thousand people relocated on their own. By the mid-1990s the relocation of residents from affected areas was generally complete.

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<sup>1</sup> Chernobyl Catastrophe, Kiev, Scientific Thought, 1995, p. 62

<sup>2</sup> The Affect of the Chernobyl Catastrophe on Social-Demographic Development in Ukraine, Kiev, 1993, p. 22

**Table 2. Number of Petitions Submitted by Ukrainian Citizens for Refugee Status in Foreign Countries and the Number of Positive Decisions Taken on these Petitions, 2007-2012**

	2007	2008	2009	2010	2011	2012
Number of Submitted Applications	1875	1691	1724	1599	1603	1749
Number Approved for Refugee Status or Humanitarian Protection	322	273	285	275	398	323

Source: data from the Office of the UN High Commissioner for Refugees





**Socio-Economic Rights of Migrants,  
Refugees and Persons Who Were  
Granted Supplementary or  
Temporary Protection in Ukraine**

**LYUDMILA DAVYDOVYCH**

*Legal Module*



Under article 26 of the Ukrainian Constitution<sup>1</sup>, foreigners and stateless persons who are staying in Ukraine on legal grounds enjoy the same rights and freedoms and have the same obligations as Ukrainian citizens, with the exception of certain cases envisaged by Ukrainian legislation. In the meantime, the scope of socio-economic rights of foreigners in the territory of Ukraine is determined by the legal status that they obtain according to the procedure established by the national legislation.

In order to analyze the socio-economic rights of migrants and persons who were granted refugee status or supplementary protection in Ukraine, let us divide them into the following categories based on the Ukrainian law “On legal status of foreigners and stateless persons”<sup>2</sup> and the law “On refugees and persons in need of supplementary or temporary protection”: *persons temporarily staying in Ukraine; persons temporarily residing in Ukraine; persons permanently residing in Ukraine; refugees and persons granted supplementary or temporary protection in Ukraine.*

## 1. Persons temporarily staying in Ukraine

The smallest scope of socio-economic rights is granted by Ukrainian legislation to *foreign nationals temporarily present in the territory of Ukraine* (for the period envisaged by their visas, but no longer than 90 days for foreigners with visa-based entry and 90 days within 180 days for citizens of states with visa-free entry to Ukraine).

This category of foreigners does not have a right to job, education and social assistance, neither does it have a right to invite family members and relatives to Ukraine during their temporary stay.

At the same time they have a right to medical care in accordance with the procedure stipulated by the Regulation of the Ukrainian Cabinet of Ministers No. 667 of 22 June 2011 “On procedure of medical assistance to foreigners and stateless persons temporarily present in Ukraine”<sup>3</sup>. According to this procedure, foreign nationals and stateless persons are provided with medical assistance on a fee-paying basis only.

Under the rules of visa issuance for entry to Ukraine and transit through its territory adopted by the Regulation of the Ukrainian Cabinet of Ministers No. 567<sup>4</sup> of 1 June 2011, foreigners and stateless persons applying for visas to enter Ukraine must have a medical insurance policy.

When entering Ukraine for the purpose of temporary stay foreigners and stateless persons are also obliged to prove that they have sufficient financial coverage for the trip and a place to stay in Ukraine during the visit. These provisions were introduced by Ukraine when amending its visa and immigration legislation, in order to bring it into compliance with the EU Visa Code provisions.

When a foreigner does not have a medical insurance policy, medical care is provided at his or her own expense; if a foreigner cannot pay, diplomatic missions of his/her country of citizenship get involved.

Ukrainian legislation does not envisage any other restrictions regarding medical care to foreigners temporarily staying in Ukraine, medical assistance is provided by all medical institutions with exceptions and in full scope.

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<sup>1</sup> Constitution of Ukraine <http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

<sup>2</sup> Ukrainian law “On legal status of foreigners and stateless persons” <http://zakon4.rada.gov.ua/laws/show/3773-17>

<sup>3</sup> Regulation of the Ukrainian Cabinet of Ministers of 22 June 2011 No. 667 “On procedure of medical assistance to foreigners and stateless persons temporarily present in Ukraine”, available at <http://zakon4.rada.gov.ua/laws/show/667-2011-%D0%BF>

<sup>4</sup> Rules of visa issuance for entry to Ukraine and transit through its territory adopted by the Regulation of the Ukrainian Cabinet of Ministers of 1 June 2011 No. 567, available at <http://zakon4.rada.gov.ua/laws/show/567-2011-%D0%BF>

## 2. Persons temporarily residing in Ukraine

Under Ukrainian law “On legal status of foreigners and stateless persons”, foreigners who obtained a temporary permit for residence in Ukraine get the status of *persons temporarily residing in Ukraine on legal grounds*.

Socio-economic rights of this category of migrants is significantly wider: they have a right to a job (provided that they have a Ukrainian work permit obtained according to the procedure established by Ukrainian legislation), right to education and language training (on a fee-paying basis), right to invite family members to Ukraine for the period of their temporary legal residence in Ukraine (“family reunification”), right to medical care (on a fee-paying basis), freedom of movement and free choice of residence. Migrants are supposed to provide accommodation and financial coverage of the temporary residence in Ukraine for themselves and their family members.

Foreigners temporarily residing in Ukraine have a right both to purchase housing and to rent it. Under Ukrainian law “On freedom of movement and free choice of residence”<sup>5</sup>, foreigners and stateless persons who arrived in Ukraine according to the procedure established by the legislation for the purpose of temporary or permanent residence are obliged to get registered in their domicile within 10 days after their arrival in their place of residence (both on their first arrival and when they change their place of residence in Ukraine). Under the law, proof of housing available in Ukraine (documents proving ownership right, contract of lease etc.) is a mandatory condition for registration. Absence of registration is an administrative offense and leads to administrative liability in accordance with the procedure established by the Ukrainian Code on Administrative Offenses<sup>6</sup>.

Under the law No. 5067 – VI “On employment of population”<sup>7</sup> of 05.07.2012, permits for employment of foreigners and stateless persons in Ukraine are issued to organizations, agencies and enterprises that petition for permit to use labor of foreigners or stateless persons. They are issued by the Ukrainian central executive body implementing government policy in the field of employment and labor migration for the period of up to 1 year, if it is not otherwise envisaged by the international treaties of Ukraine approved by its Parliament.

The following persons are also obliged to obtain work permits:

- foreigners and stateless persons who arrive in Ukraine for the purpose of employment on the basis of labor contracts concluded by foreign and Ukrainian economic entities. (There is a restriction on employment of foreigners in Ukraine under such contracts: the law stipulates that the share of qualified foreigners who get employed in Ukraine under a certain type of contract will not exceed half of the overall number of persons employed under such contracts);
- foreigners who, in accordance with the Ukrainian Schedule of Specific Commitments in Services within the framework of the Protocol of Accession to WTO<sup>8</sup> (article II of the General Agreement on Trade in Services<sup>9</sup>), fall within the category of “intracorporate cessionaries”;
- persons with regards to whom a decision was made to consider application for refugee status in Ukraine.

<sup>5</sup> Law of Ukraine of 11.12.03 No. 1382 – IV “On freedom of movement and free choice of residence”, available at <http://zakon4.rada.gov.ua/laws/show/1382-15>

<sup>6</sup> Ukrainian Code on Administrative Offense, available at <http://zakon4.rada.gov.ua/laws/show/80731-10>

<sup>7</sup> Law of Ukraine of 05.07.2012 No. 5067 – VI “On employment of population”, available at <http://zakon4.rada.gov.ua/laws/show/5067-17>

<sup>8</sup> WTO Protocol on the Accession of Ukraine, available at [http://zakon4.rada.gov.ua/laws/show/981\\_049](http://zakon4.rada.gov.ua/laws/show/981_049)

<sup>9</sup> General Agreement on Trade in Services, available at [http://zakon4.rada.gov.ua/laws/show/981\\_017](http://zakon4.rada.gov.ua/laws/show/981_017)

At the same time the law stipulates that foreigners and stateless persons cannot be appointed to a position or carry out an activity, if under Ukrainian legislation appointment to that position or that activity is predicated on Ukrainian citizenship, if it is not otherwise established by international treaties of Ukraine ratified by the Ukrainian Parliament.

Analyzing migrants' access to the right to employment in Ukraine, one should point to some deficiencies of Ukrainian legislation in this field. For instance, the law "On employment of population" and the law "On status of foreigners and stateless persons" do not envisage the procedure for employment of foreigners who arrive in Ukraine to work under labor contracts with foreign diplomatic missions or diplomatic agents of third countries. Thus, under current Ukrainian legislation, such migrants arriving in Ukraine to work under these contracts would have to obtain work permits, which is impossible due to the legal status of foreign diplomatic missions and diplomatic agents. Thus, this category of migrants has been beyond the law for some time. However, as of September 2013 Ukraine is taking steps to resolve this problem by introducing amendments into both laws, in order to free this category of migrants from having to obtain permits to work in Ukraine.

In July 2013 amendments were also introduced into the law "On employment of population" that freed foreigners who are invited to Ukraine by Ukraine state higher education institutions to teach in their discipline areas (par. 11 article 42) from having to obtain permits to work in Ukraine. In the meantime, as of September 2013 corresponding amendments are yet to be introduced into the law "On legal status of foreigners" and the Regulation of the Ukrainian Cabinet of Ministers of 28.03.13 No. 251 "On procedure of procurement, production and issuance of temporary and permanent residence permits in Ukraine"<sup>10</sup>, namely into the sections on rights and procedure for obtaining temporary residence permit in Ukraine by this category of migrants. Ukraine is taking steps to introduce corresponding amendments into its legislation in the nearest future.

The right and procedure of foreigners' education in Ukraine are determined by the Ukrainian legislation, including Regulation of the Ukrainian Cabinet of Ministers of 26.02.93 No. 136 "On education of foreign citizens in Ukraine"<sup>11</sup>.

Under Ukrainian legislation, training of foreign specialists at Ukrainian educational institutions is carried out primarily on a fee-paying basis within interstate agreements, as well as agreements of ministries, agencies, and educational institutions concluded with government agencies in the field of education, private companies, enterprises from other states, as well as international organizations. Education can be paid for by both legal and physical persons.

The right of foreigners and stateless persons to undergo education according to the procedure established by the Ukrainian legislation serves as grounds for obtaining a temporary residence permit.

In our point of view, a migrant who temporarily resides in Ukraine on legal grounds can exercise the right to education in Ukraine while being engaged in his/her main legal activity during legal temporary residence in the territory of Ukraine on any other grounds. We keep in mind that Ukrainian legislation does not directly ban the migrant temporarily residing in Ukraine on legal grounds (for instance, for the purpose of employment) from concurrently studying at a Ukrainian educational institution, attending language courses etc. At the same time work should remain the main objective of that foreigner's or stateless person's stay in Ukraine. If a migrant makes a decision to stop labor activities and make education the main objective of his or her stay in Ukraine, this will lead to the change of his/her status, as defined by the law "On legal status of foreigners and stateless persons". Such foreigner or stateless person will have to register the new status in accordance with the Ukrainian

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<sup>10</sup> Regulation of the Ukrainian Cabinet of Ministers of 28.03.13 No. 251 "On procedure of procurement, production and issuance of temporary and permanent residence permits in Ukraine", available at <http://zakon4.rada.gov.ua/laws/show/251-2012-%D0%BF>

<sup>11</sup> Regulation of the Ukrainian Cabinet of Ministers of 26.02.93 No. 136 "On education of foreign citizens in Ukraine", available at <http://zakon4.rada.gov.ua/laws/show/136-93-%D0%BF>

legislation (obtain a D visa with study purposes and a temporary residence permit for the purpose of studying in Ukraine).

Migrants who temporarily reside in Ukraine on legal grounds have a right to invite their family members, friends, relatives and acquaintances to Ukraine for temporary stay, complying with the procedure approved by the Ukrainian Ministry of Interior<sup>12</sup>.

Under Ukrainian legislation, a long-term visa for entry to Ukraine is issued for foreigners and stateless persons who are migrant's family members (husband/wife, underage children, disabled parents and persons who are considered family members in accordance with the legal system of the migrant's country of origin).

These visas are issued by Ukrainian diplomatic missions and consular offices abroad on the basis of the copy of migrant's temporary residence permit, documents proving kinship and documents proving sufficient financial coverage available for applicants' residence in Ukraine in the course of the indicated period.

After entry to Ukraine such migrants file an application to the State Migration Service for a temporary permit to reside in Ukraine. Documents that give a right to temporary legal residence in Ukraine are issued to relatives of temporarily residing migrants for the same period as a residence permit of the host.

### **3. Persons permanently residing in Ukraine**

Persons who arrived in Ukraine according to the procedure established by the legislation for the purpose of permanent residence enjoy the full scope of socio-economic rights provided by Ukrainian legislation, namely: right to employment in Ukraine without having to apply for work permit, right to obtaining a permanent residence permit for their family members within the immigration quota (article 4 of the law "On immigration"), right to social protection and security in accordance with the procedure established by Ukrainian legislation.

Let us note that under Ukrainian legislation the right to permanent residence permit in Ukraine is enjoyed by persons who arrived in Ukraine according to the procedure established by the law "On immigration"<sup>13</sup>, as well as foreigners and stateless persons who after making a decision to abandon Ukrainian citizenship chose to permanently reside in in Ukraine.

### **4. Refugees and persons who were granted supplementary protection**

Under Ukrainian law "On refugees and persons in need of supplementary protection"<sup>14</sup>, *refugees and persons who were granted supplementary protection by Ukraine* enjoy the same socio-economic rights and have the same obligations as Ukrainian citizens.

The law stipulates that persons who were granted refugee status or supplementary protection by Ukraine are considered equal to those who permanently reside in Ukraine.

Refugees and persons who were granted supplementary protection by Ukraine have a right to free movement, free choice of residence, free departure from Ukraine; employment; entrepreneurial activities permitted by legislation; healthcare; medical care and medical insurance; rest; education;

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<sup>12</sup> Decree of Ukrainian Ministry of Interior of 8.10.08 No. 524 "On Procedure of drawing up invitations for entry of foreigners and stateless persons to Ukraine", available at <http://zakon4.rada.gov.ua/laws/show/z1096-08>

<sup>13</sup> Ukrainian law "On immigration" of 07.06.2011 No. 2491-III, available at <http://zakon4.rada.gov.ua/laws/show/2491-14>

<sup>14</sup> Law of Ukraine "On refugees and persons in need of supplementary protection", available at <http://zakon4.rada.gov.ua/laws/show/2557-14/page>

freedom of conscience and worldview; individual or collective application to Ukrainian central executive bodies; right to own, use and dispose of property and results of creative or intellectual activities; right to challenge action or inaction of the local government in court; application to the Ukrainian Parliament Commissioner for Human Rights to seek protection of their rights; free-of-charge legal assistance; financial assistance, retirement benefits and insurance payments; use of housing they were provided with.

Under Ukrainian legislation a person is considered a refugee or a person under supplementary protection and, correspondingly, enjoys socio-economic rights stipulated for this category from the moment when Ukrainian competent bodies make a final decision to grant refugee status or supplementary protection to that person.

Our analysis of Ukrainian legislation in the field of refugee protection allows making a conclusion that Ukrainian legal framework has settled major issues associated with the status and socio-economic rights of persons with regards to whom corresponding Ukrainian bodies consider granting refugee status or supplementary protection in Ukraine.

The law defines this category of persons as “persons with regards to whom a decision was made to process documents for making a decision on granting refugee status or supplementary protection in Ukraine” (article 13 of the law “On refugees”).

Such persons have a right to temporary employment, education, medical care, accommodation at a hotel, at relatives’ place or in housing space provided for temporary accommodation of refugees, free-of-charge legal assistance, confidential correspondence with the Office of the United Nations High Commissioner for Refugees, as well as meetings with its representatives.

Under Ukrainian legislation, foreigners and stateless persons who temporarily or permanently reside in Ukraine, including refugees and persons under supplementary protection, are obliged to get registered in the place of their residence just as Ukrainian citizens. Persons with regards to whom a decision was made to process documents for making a decision on granting refugee status or supplementary protection in Ukraine are supposed to go to the temporary accommodation facility chosen for them and must inform the State Migration Service about their trips beyond the administrative territorial units where they reside.

Ukrainian legislation is also meant to ensure maxim possible scope of socio-economic rights for *persons who were granted temporary protection in Ukraine* (article 20 of the law “On refugees”). These persons have a right to free-of-charge accommodation, provision with sufficient nutrition, clothes and medication taking into account special needs of new-born children, senior persons, and persons with disabilities; employment in Ukraine, for the period envisaged by temporary protection; financial assistance, if they have no source of additional income in Ukraine; freedom of movement within the territory of Ukraine, in accordance with the procedure established by the Ukrainian legislation for persons temporary staying in Ukraine on legal grounds; free-of-charge medical care at public medical institutions in Ukraine; voluntary return to the country of origin; petitioning for refugee status or status of a person in need of additional protection; acquisition of information on his/her rights and obligations in the native language or language they understand. Underage persons who were granted temporary protection in the territory of Ukraine have a right to upbringing and education at public or community preschool, secondary general and professional educational institutions.

We believe that our analysis of Ukrainian legislation demonstrates that by and large Ukraine ensures maximum access of migrants who temporarily or permanently reside in Ukraine on legal grounds to opportunities of socio-economic rights implementation. There are some gaps in Ukrainian legislation regulating labor relations with foreigners, but we hope that they will be filled soon.





**Asylum Seekers and Refugees  
in Ukraine: Recognition,  
Social Protection and Integration**

**EKATERYNA IVASCHENKO**

*Socio-Political Module*



## Asylum seekers and refugees in Ukraine<sup>1</sup>: Recognition, social protection and integration

*Present-day profile of Ukraine in the context of asylum problem.* In the history of independent Ukraine the problem of refugees came to the surface over 20 years ago with the first wave of forced migrants from Moldova during the 1992 conflict in Transnistria. The influx of refugees is becoming a more and more pressing issue due to new political, military and international conflicts in the world, however governmental policy with regards to persons seeking temporary or permanent refuge in Ukraine is still being shaped<sup>2</sup> and often fails to provide adequate legal and institutional foundation for efficient decisions that would comply with international norms and protect the rights of citizens in need of protection. In two recently published detailed reports analyzing protection of asylum seekers' and refugees' rights (including observations of the UN Refugee Agency<sup>3</sup> and review by Ukrainian non-governmental organizations "No Borders" Project and Social Action Centre<sup>4</sup>) it is noted that persons seeking asylum face numerous problems in Ukraine: from limited chances to obtain the legal status of a refugee to 'insurmountable obstacles' in achieving 'social self-sufficiency'<sup>5</sup>. Migration system reform that is currently underway and insufficient normative basis for decision-making are used by officers of the Ukrainian State Migration Service and its territorial divisions as an argument for the formal refusal to accept applications, issue certificates, extend registration, and offer interpreting services or accommodation in the temporary accommodation center<sup>6</sup>. Systematic violations of the asylum procedure are also caused by excessive politicization of the process: agencies responsible for decision-making are often guided by the kind of relations Ukraine has with the refugee's country of origin<sup>7</sup>. Besides, there is a widespread practice of returning asylum seekers and persons seeking refugee status to the country of origin after the first request of that country's authorities. For instance, world media extensively covered the deportation of the Uzbek opposition movement members from

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<sup>1</sup> The problem of 'internal refugees', i.e. persons who left a conflict region of the state and settled in another region of the same state (the so-called internal displaced persons, IDP), is not dealt with in this explanatory note, as far as it is not a pressing issue for Ukraine, unlike many other CIS countries.

<sup>2</sup> Development of the governmental instrument for refugee protection started with the Regulation signed by the Ukrainian Cabinet of Ministers "On approval of temporary regulation on procedure of identification of the status of refugees from the Republic of Moldova and assistance to them" in 1992 and subsequently adopted law "On Refugees" (versions of 1993, 2002 and 2005 establish different timeframes for submitting an asylum application after crossing the Ukrainian border – from three days in the first version to 'without delay' in the latest). Significant changes in the regulation of procedure of obtaining the refugee status in Ukraine occurred in 2011 with adoption of the law "On Refugees and Persons in Need of Complementary and Temporary Protection", that for the first time fixed the status of persons in need of protection in legislation, but again established strict time limits for application (within five days from the moment of crossing the border), which because of the complex mechanism of preparing and submitting documents by applicants and unstable schedule of the territorial migration service divisions "would cast doubt upon asylum procedure being accessible in Ukraine". Besides, the Law of 2011 obliged the Cabinet of Ministers to bring the rest of legislation in line with its provisions within three months. In practice the government failed to do that within the indicated period. Experts note that at present "different aspects of migration are regulated by different, often unrelated, laws and normative acts", and some aspects regulating procedure of protection of asylum-seekers and refugees are not reflected in any legal act". See: *Refugees in Ukraine – without the Right for Asylum: Overview of Refugee and Asylum-Seekers Rights Violations in Ukraine* [in Russian] (2012), Kiev: "No Border" project, Social Action Centre, p. 6,7. Available at: [http://noborders.org.ua/ru/files/2012/01/Refugees-in-Ukraine\\_short-overview.pdf](http://noborders.org.ua/ru/files/2012/01/Refugees-in-Ukraine_short-overview.pdf), accessed on 14 August 2013.

<sup>3</sup> *Ukraine as a Country of Asylum: Observations on the Situation of Asylum-seekers and Refugees in Ukraine* / The UN Refugee Agency, July 2013. Available at: <http://www.refworld.org/docid/51ee97344.html>, accessed on 7 August 2013.

<sup>4</sup> *Refugees in Ukraine* [in Russian], *ibid.*

<sup>5</sup> *Ukraine as a Country of Asylum*, p.4.

<sup>6</sup> *Ibid.*, p.5.

<sup>7</sup> According to the "No Borders" project, asylum-seekers from Russia and Uzbekistan are denied with 90% probability.

Ukraine<sup>8</sup> and denial of asylum to Russian activists and persons involved in ‘Bolotnaya square case’<sup>9</sup>. At the same time representatives of Ukrainian governmental bodies deny political motivation behind those decisions insisting that “migration service operates strictly within the legal boundaries, and if anyone failed to obtain the (refugee) status, probably they were lacking some documents”<sup>10</sup>. Biases are present in decision-making, when it comes to administrative and legal regulation of rights of refugees and persons in need of additional protection, and the negative image of these groups is created: law enforcement agencies, radical political forces and mass media<sup>11</sup> criminalize migration and shape the public mistrust, fear and antagonism towards forced migrants, which prevents their successful integration in the destination country.

The above-mentioned problems restrict the person’s chances to be recognized as a refugee in Ukraine. Combined with lower social standards compared to developed countries<sup>12</sup>, they explain Ukraine’s relatively low attractiveness as a country of destination. However, geographic position, particularly proximity to Russia and the European Union, encourages the constant influx of persons seeking asylum and considering Ukraine primarily as a country of transit.

Over the years since the refugee protection instrument has been created<sup>13</sup>, Ukraine received around 30 thousand applications for asylum, and only a little over 20% petitions were granted. Moreover, the share of granted refugee statuses was higher in the 1990s and has been in constant decline starting from 2000. Thus, over the past five years, from 2008 to 2012, petitions of only around 8% of applicants were granted<sup>14</sup>. One can compare that to figures for the EU member states: 28.2% of

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<sup>8</sup> (On deportation of Uzbek political refugees from Ukraine in 2006 who after their return to Uzbekistan were sentenced to prison terms from 3 to 13 years) Human rights advocates are outraged by the deportation of Uzbek refugees [in Russian] // *RBC Ukraine*, 21 February 2006. Available at: [http://www.rbc.ua/rus/top/show/pravozashchitniki\\_vozmushcheny\\_deportatsiey\\_uzbekov\\_1140537826](http://www.rbc.ua/rus/top/show/pravozashchitniki_vozmushcheny_deportatsiey_uzbekov_1140537826), accessed on 12 August 2013.

<sup>9</sup> Authorities assure that Russians are denied refugee status not because of politics [in Russian] // *Ukrainskaya Pravda*, 30 July 2013. Available at: <http://www.pravda.com.ua/rus/news/2013/07/30/6995188/>, accessed on 13 August 2013; Why does Ukraine deny asylum to Russian opposition members [in Russian] // *DW*, 20 June 2013. Available at: <http://www.dw.de/почему-украина-отказывает-в-убежище-российским-оппозиционерам/a-16860441>, accessible on 11 August 2013. See also: (on denying asylum to Russian opposition members Mikhail Maglov, Jenny Curpen and Alexey Devyatkin in 2012) Maglov M. (2013), Refugees in Ukraine [in Russian] // *Ukrainskaya Pravda*, 20 June 2013. Available at: <http://www.pravda.com.ua/rus/columns/2013/06/20/6992682/>, accessible on 12 August 2013; (about Russian opposition member Leonid Razvozhayev who disappeared during the break in consultation regarding political asylum in Ukraine and was forcefully taken to Russia in 2012) Razvozhayev gave an account of the full version of his abduction [in Russian] // *Ukrainskaya Pravda*, 25 October 2012. Available at: <http://www.pravda.com.ua/rus/news/2012/10/25/6975364/>.

<sup>10</sup> Comment of the State Migration Service head Vasily Gritsak during the lunch press conference at the regional office of UNHCR. See: Authorities assure that Russians are denied refugee status not because of politics [in Russian], *ibid*.

<sup>11</sup> Boksha T., Vasilchenko A., Ivanova T., Kravchuk D., Nosak G., Criminalization of Migration in Kiev: Case Study of Arsons at Shulyavsky Second Hand Market [in Ukrainian] // *Journal of Social Critique “Spilno”*, No. 1, 2010, p.79.

<sup>12</sup> Group of countries defined by the International Monetary Fund as developed countries with advanced economies. See: World Economic Outlook / *IMF*, April 2011, p. 150. Available at: <http://www.imf.org/external/pubs/ft/weo/2011/01/pdf/text.pdf>, accessed on 11 August 2013.

<sup>13</sup> Refugee protection instrument is understood as the asylum system (it includes not only national legislation, but also international and regional information on legal, political, social, organizational issues, that is used by institutionalized national bodies for decision-making on granting the refugee status). In Ukraine the system of asylum is considered to have started its formation in 1993 after adoption of the first law “On Refugees” that defined the mechanism of granting refugee status, outlined the legal field for decision-making and established the scope of authority for national executive bodies. See *Refugees in Ukraine*, *ibid*, p.4,5; Ukrainian law “On Refugees” / Verkhovna Rada of Ukraine, 24 December 1993. Available at: <http://zakon4.rada.gov.ua/laws/show/3818-12>, accessible on 15 August 2013.

<sup>14</sup> 27,297 applications were received over the period from 1996 to 2012 and 6,147 of them were satisfied. *Ukraine as a Country of Asylum*, p.4.

petitions for refugee status or additional protection were granted in 2012<sup>15</sup>. As of late 2012, around 2,500 persons having refugee status and around 1500 asylum seekers resided in Ukraine<sup>16</sup>. Only 270 refugees were granted Ukrainian citizenship between 2008 and 2012<sup>17</sup>. Ethno-national composition of refugee seekers underwent considerable transformation with the change of political situation in the world: according to the 2009 data, the largest number of persons seeking asylum came to Ukraine from Asia (74.4%), Africa (17.4%), Europe (5.6%) and other countries (1.5%)<sup>18</sup>. The largest number of persons applying for the refugee status in Ukraine over the recent years arrived (most often transiting through the Russian territory) from Afghanistan, Somalia, Syria and Kyrgyzstan<sup>19</sup>. Migration agency statistics demonstrates that people coming from the former USSR and having potentially higher chances of successful integration in the Ukrainian society due to their linguistic and cultural proximity now have the lowest chances of being granted the refugee status in Ukraine<sup>20</sup>.

*Policy regarding social protection and integration of asylum seekers and refugees in Ukraine.* According to non-governmental organizations rendering assistance to refugees and monitoring their position in Ukraine<sup>21</sup>, at present the Ukrainian government does not consider it a priority to allocate budgetary funds for social protection and integration of refugees. Support of persons with refugee status is limited to the one-time payment of 17 hryvnas that has not been reviewed for many years<sup>22</sup>, as well as offering temporary accommodation facilities to refugees with a number of places that satisfies only less than one fifth of the real demand for accommodation<sup>23</sup>. However, according to the UNHCR representative Mr. Oldrich Andrysek, even with this symbolic assistance from the government, in practice 9 out of 10 official refugees can sustain themselves, because having documents they can get employed, rent accommodation or start their own business<sup>24</sup>. Persons with additional protection status and asylum seekers do not have documents that would give them an opportunity to seek legal employment<sup>25</sup>. This combined with not speaking Ukrainian or Russian is the main obstacle on the path towards 'social self-sufficiency'<sup>26</sup> and becomes the main reason for their marginalization and

<sup>15</sup> (Interview with the representative of UNHCR) – Status of refugees and 17 hryvnas: beginning of a new life [in Russian] // *Kiev city portal*, 8 August 2013. Available at: <http://yakiev.com/news/publication-446/>, accessed on 11 August 2013.

<sup>16</sup> Ibid.

<sup>17</sup> *Ukraine as a Country of Asylum*, p.4.

<sup>18</sup> *Refugees in Ukraine*, p.2.

<sup>19</sup> *Ukraine as a Country of Asylum*, c.4.

<sup>20</sup> Thus, for instance, only 3 out of 755 applications of persons from Kyrgyzstan, Uzbekistan and Russia examined in 2010-2012 were satisfied. *Ukraine as a Country of Asylum*, p.19.

<sup>21</sup> Among them – Ukrainian NGOs, through which assistance is rendered to refugees and persons in need of protection, UNHCR, UNICEF, International Fund “Resurrection”, International Women’s Club of Kiev and other non-governmental organizations and charity funds.

<sup>22</sup> The sum is equivalent to 2.12 USD, according to the National Bank of Ukraine exchange rate.

<sup>23</sup> There are three temporary accommodation facilities for refugees – in the Transcarpathian region (with administrative office in Uzhhorod and two accommodation centres in Mukacheve and Perechyn), Odessa and Yagotin (Kiev Region) with the total of 320 places. Taking into account that Ukraine receives 1500-2000 applications from asylum seekers a year, they do not provide accommodation to everyone who needs it. The government allocates 15 hryvnas a day (less than 2 USD) for meals of refugees at temporary accommodation facilities. See: Temporary accommodation facilities for refugees in Ukraine [in Ukrainian] (2013) / *Ukrainian State Migration Service*. Available at: [http://dmsu.gov.ua/index.php?option=com\\_content&view=category&layout=blog&id=34&Itemid=125](http://dmsu.gov.ua/index.php?option=com_content&view=category&layout=blog&id=34&Itemid=125), accessed on 11 August 2013.

<sup>24</sup> Status of Refugees and 17 Hryvnas: the Beginning of a New Life.

<sup>25</sup> Certificate issued to asylum seekers is not a full-fledged legal substitute of an identify document.

<sup>26</sup> Definition used in the UNHCR report. *Ukraine as a Country of Asylum: Observations on the Situation of Asylum-seekers and Refugees in Ukraine*, p.4.

vulnerability in Ukrainian society<sup>27</sup>. At present there are no governmental programs for adaptation of refugees in Ukraine, there are no free of charge or discount Ukrainian or Russian language courses, there are no special courts to consider migration cases.

Heightened attention of the international community to the refugee problems, for instance, attention of UNHCR, Council of Europe, Amnesty International and other international organizations, contributes to the development of target-oriented governmental programs making the government responsible for integration of refugees in the host country. After a long public discussion in August 2012 the Ukrainian Cabinet of Ministers adopted a national “Plan of actions for integration of refugees and persons in need of special protection in the Ukrainian society until 2020”<sup>28</sup>. The plan envisages offering social protection to refugees, as well as opportunities for integration in the fields that were not paid enough attention previously, including: offering an opportunity to study Ukrainian language, history, culture and political structure; rendering psychosocial, medical and legal assistance; assistance in resolution of the housing problem; assistance in employment; health-improving and educational work with children; social work targeting single mothers and single pregnant women among refugees. One can list the following practical steps envisaged by the plan and aimed to improve social position of refugees: satisfy the need of migration service for interpreters; develop the list of educational and medical institutions taking part in refugee social protection programs; offer the refugees medical insurance and access to bank loans for starting a new business; offer social housing; assist in voluntary accommodation in the rural areas and depressed regions. Besides, it is planned to develop special courses to train public servants and law enforcement officers for work with refugees and persons in need of complementary protection. Significant attention in the document is paid to the issue of forming tolerant attitude to refugees and persons in need of complementary protection and enhancing the degree of public awareness about refugee problems. For instance, it is planned to create a series of special TV and radio programs and ensure the publication of relevant materials in electronic and printed mass media. However, as far as the budgetary aspect of the above-mentioned measures is not clearly defined, it is difficult to say how efficiently this plan will be implemented. Intermediary report of the State Migration Service on the course of the plan implementation<sup>29</sup> demonstrates that in the context of Ukrainian budget deficit one cannot talk about considerable investments into the action plan that would be commensurate with the existing needs. It is indicative that at present (summer 2013) a unique Integration Center for refugees and their children is under the threat of being shut down. This Center has existed for 15 years in Kiev being funded by international organizations and supported by Ukrainian NGOs<sup>30</sup>. In the very beginning it was planned that its functions would eventually be assumed by the Ukrainian government. However, this did not happen, and as far as the term of lease expired, the Center was told to leave the building the reconstruction of which was paid for by international organizations and move to another venue, not suited for work with women and children<sup>31</sup>.

<sup>27</sup> Human rights organizations registered cases when undocumented refugees became targets of arbitrary arrests and extortion by law enforcement officers.

<sup>28</sup> On approval of the action plan for integration of refugees and persons in need of complementary protection in Ukrainian society until 2020 [in Ukrainian] / Kiev, Ukrainian Cabinet of Ministers, 22 August 2012. No. 605-r. Available at: <http://zakon4.rada.gov.ua/laws/show/605-2012-%D1%80>, accessed on 14 August 2013.

<sup>29</sup> Information on implementation of the action plan for integration of refugees and persons in need of complementary protection in Ukrainian society until 2020 (2013) [in Ukrainian] / *Ukrainian State Migration Service*. Available at: <http://dmsu.gov.ua/zakhody-intehratsii-bizhentsiv-ta-osib-iaki-potrebiut-dodatkovoho-zakhystu-v-ukrainske-suspilstvo-u-2012-rotsi>, accessed on 13 August 2013.

<sup>30</sup> I Am a Refugee. Three Stories [in Russian] // *Ukrainskaya Pravda*, 21 June 2013. Available at: <http://life.pravda.com.ua/society/2013/06/21/131740/>, accessed on 12 August 2013.

<sup>31</sup> Petition addressed to the Kiev authorities and requesting not to take the building away was signed by 750 activists of the Integration Center.

*Public discourse: do public opinion and mass media hinder or encourage integration?* Current ethno-national composition of refugees in Ukraine, namely predominance of persons from Asia and Africa, predetermines difficulties in the cultural interaction of forced migrants with the local population. With the exception of numerous refugees coming from Afghanistan<sup>32</sup>, many of whom studied at Russian or Ukrainian universities, speak the language well and maintain personal ties with the local population, predominant majority of new non-Slavic refugees find it hard to overcome the language barrier and start a new life in Ukraine. As a result of the survey carried out at the temporary accommodation center in Odessa, most refugees residing in Ukraine for over a year are characterized by high adaptability, but at the same time by clearly manifested estrangement: i.e. such refugees to a certain degree understand the laws, speak the language, know the culture and values of the new country, but have no acquaintances among the local population, manifest concern about their status and express lack of confidence that their personal efforts can improve their situation. Another share of respondents, despite a rather prolonged period of stay in Ukraine, manifests low adaptability and high degree of estrangement: they do not know the local language, culture and values, feel mistrust towards people around them and feel unprotected<sup>33</sup>. Both groups need not only assistance in resolving their financial problems, but also assistance in communication with the local population, enhancing the degree of mutual awareness and tolerance.

Results of the social distance research confirm that though general degree of international tolerance in Ukraine has remained relatively stable over the recent years<sup>34</sup>, some ethnic groups are traditionally perceived with greater distance<sup>35</sup> than others. Thus, for instance, when asked who “they would not let to enter Ukraine at all”, more than half of respondents mentioned Chechens, over 40% said the same about Roma, over one third – about Arabs and Afghans, around 20% – about Afro-Americans and Chinese<sup>36</sup>. Sociologists note that Ukrainians become more xenophobic, when there is a decline in their social position<sup>37</sup>. In this case refugees can be perceived as a threatening factor, worsening the situation in the housing market and increasing competition in the labor market, potentially creating the risks of social instability and disorder hotbeds in the areas of compact settlement. However, the data of qualitative sociological studies demonstrate that race is not the most significant line dividing the society. “The main social division happens across the property lines”<sup>38</sup>, and concerns regarding the possible influx of refugees, migrants and incomers rank last in the ‘hierarchy of concerns’ of the Ukrainian society (see fig.).

<sup>32</sup> Around one half of all refugees in Ukraine come from Afghanistan. See: In Ukraine half of refugees come from Afghanistan. Interview with UNHCR representative Natalya Prokopchuk // *FORUM*, 17 August 2006. Available at: <http://for-ua.com/interview/2006/08/17/121142.html>, accessed on 12 August 2013. Afghan families with numerous children seeking asylum in Ukraine are characterized by gender inequality of integration opportunities: women cannot and have no right to work, maintain no contact with the outside world, do not learn the language, and this hinders their socio-cultural adaptation in the country of stay.

<sup>33</sup> Plashkina L. (2011), Refugees in Ukraine / *Proceedings of the conference “Contemporary Problems of Societal Development”* (London, Odessa, 11-18 April 2011). Available at: <http://gisap.eu/ru/node/397>, accessed on 14 August 2013.

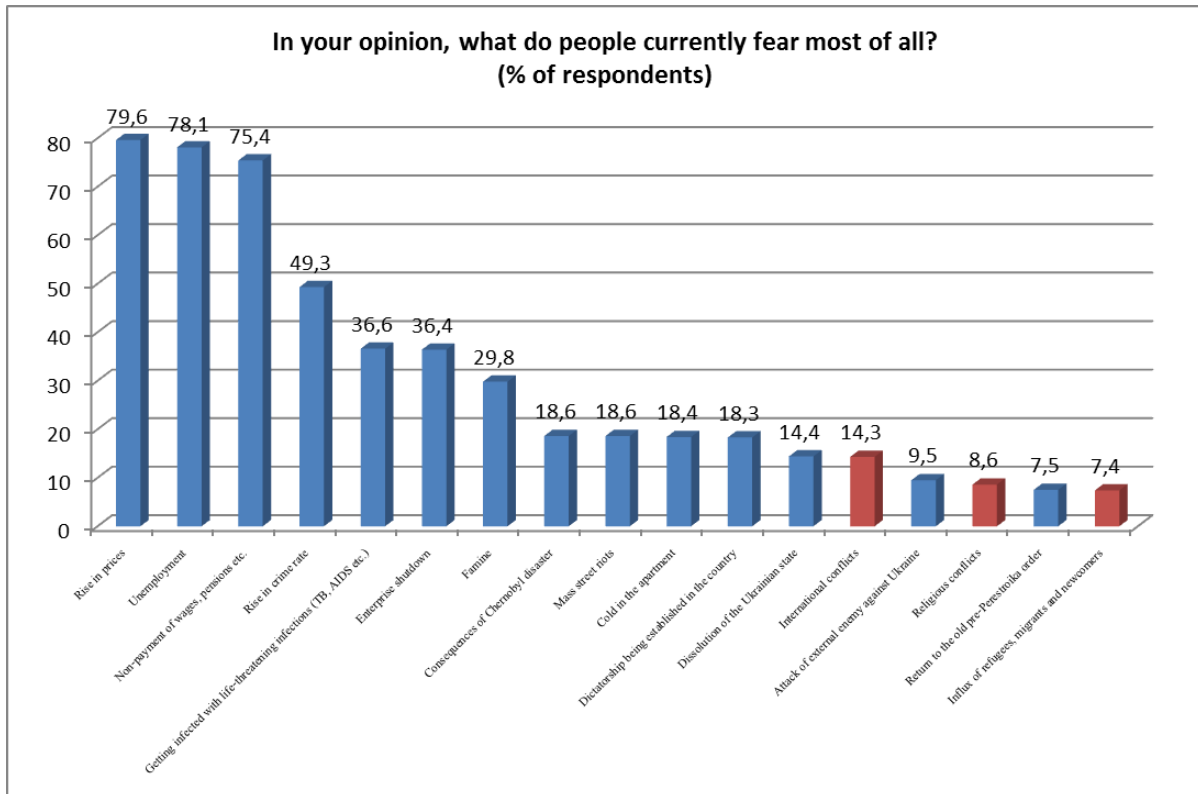
<sup>34</sup> Thus, for instance, less than 3% of surveyed Ukrainian citizens faced manifestations of discrimination with regards to other nationalities over the past year.

<sup>35</sup> Great distance, based on the Bogardus social distance scale used in these studies, means that the greater the prejudice felt by an individual towards a certain racial or ethnic group, the less willing he/she is to interact with members of this group and the less close are the relations he/she is ready to have with this group. See: Marshall G. (1998), Bogardus social distance scale in *A Dictionary of Sociology // Encyclopedia.com*. Available at: <http://www.encyclopedia.com/doc/1O88-Bogardussocialdistancescl.html>, accessed on 26 August 2013.

<sup>36</sup> Ukrainian Society (1992-2012). *Contemporary State and Dynamic of Change. Sociological Monitoring* [in Ukrainian] / Ed. by V. Vorona & M. Shulga, Kiev, 2010, p. 520-532.

<sup>37</sup> Boksha T., Vasilchenko A., Ivanova T., Kravchuk D., Nosak G., p. 86.

<sup>38</sup> For instance, general experience in the unregulated market, joint counteraction to police pressure and fighting for the commercial spot contribute to enhanced solidarity: locals and outsiders fighting for survival face common difficulties and share similar values. See results of the survey of the Shulyavsky market salesmen in Kiev: Boksha T., Vasilchenko A., Ivanova T., Kravchuk D., Nosak G., p. 87-88.



\* Figure prepared by the author on the basis of unpublished data of the survey “Ukrainian Society”, Institute of Sociology, Ukrainian National Academy of Sciences, 2013.

When there is no personal experience of communication between the locals and the refugees, public opinion becomes especially susceptible to images and stereotypes broadcast by the mass media. In this connection experts indicate the danger of mass media using the negative clichés associated with the representatives of different nationalities that “wander from unscrupulously prepared police reports to newspaper titles and TV screens”<sup>39</sup>. In such reports people coming from certain regions are mentioned in the context of real or alleged offences without taking into account economic, social and cultural context. That is why Ukrainian researchers emphasize: “stigmatization of foreigners as bad ‘others’ distracts public opinion from other problems that have an impact on all Ukrainian residents regardless of their background”<sup>40</sup>.

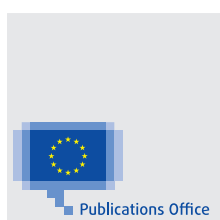
In order to create an efficient mechanism for social adaptation of refugees and their integration into Ukrainian society, it is necessary not only to improve the normative basis and allocate public funds for practical measures envisaged by the plan (obviously this process requires considerable mobilization of efforts and resources of the Ukrainian public bodies), but also to take all possible measures, in order to enhance the synergy of international and national non-governmental organizations, charity funds, human rights centers, researchers, mass media representatives and civil society activists. Among other things, it is expedient to initiate a special sociological research to study models of adaptation among various national, gender, age and social groups of refugees and asylum seekers in different Ukrainian regions. Analysis of factors contributing to successful adaptation and efficient intercultural interaction can be used in further outreach to refugees residing in Ukraine, in order to help create conditions for their ‘social self-sufficiency’ in the value field common for the Ukrainian society.

<sup>39</sup> Ibid, p.86.

<sup>40</sup> The cited conclusion makes a reference to Pierre Bourdieu analyzing his experience of interviewing two teenagers from a poor neighborhood, one of whom was French and the other – Berber. Ibid, p.88.







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